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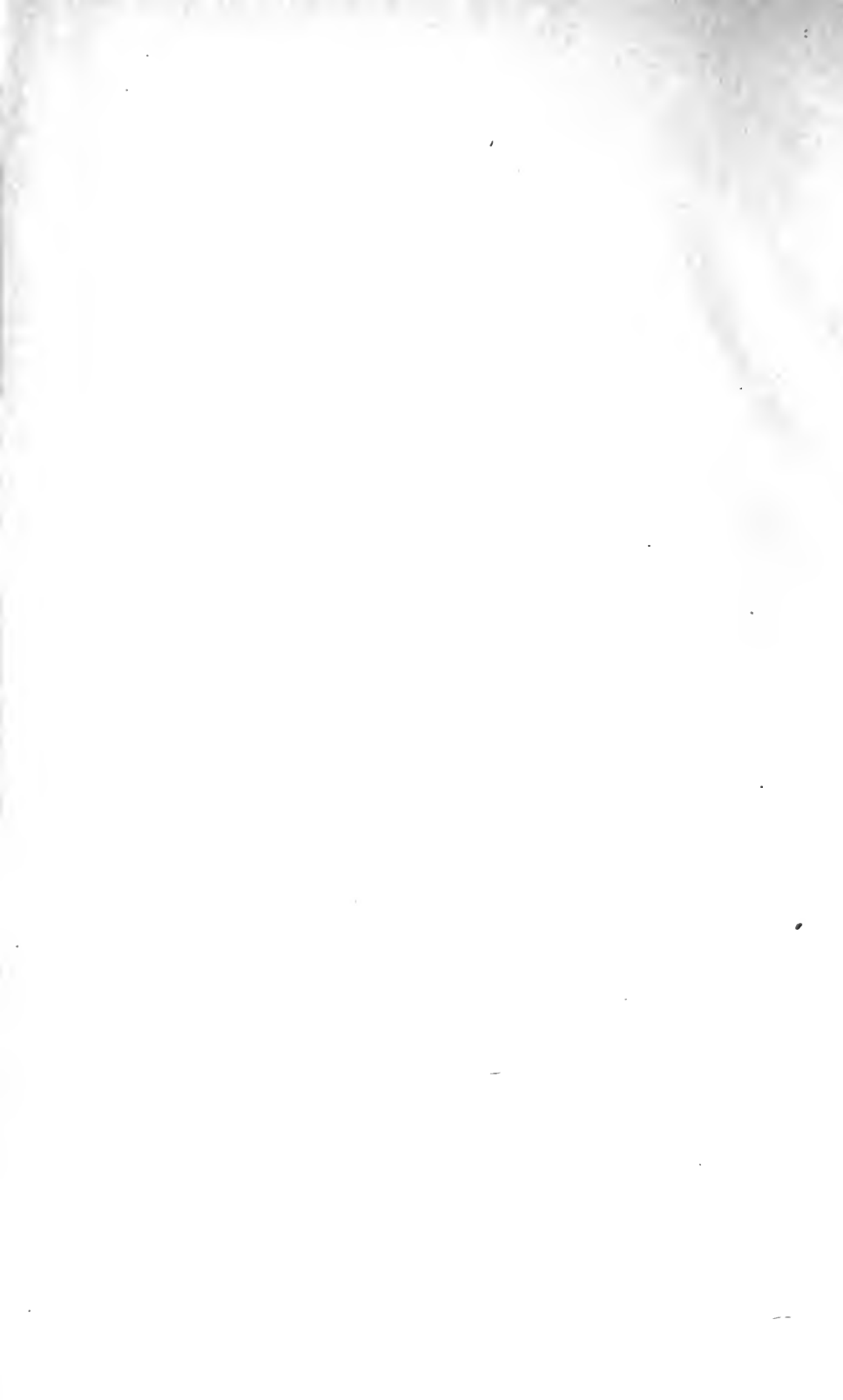
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2490
No. 11704

United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation,

Appellee.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
IN THREE VOLUMES
VOLUME I
Pages 1 to 384

Upon Appeal from the District Court of the United States
for the Eastern District of Washington
Southern Division

FILED
JAN 23 1948

United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,
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Appellee.

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Southern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amended Petition for Condemnation.....	16
Authorizing and Directing Amended Petition for Condemnation.....	23
Amended Petition for Condemnation, Filed Aug. 26, 1943, in 128-43.....	70
Amended Petition for Condemnation, Filed May 12, 1944.....	106
Answer to Amended Petition for Condemnation by Priest Rapids.....	161
Exhibit A—Order Granting Right of Immediate Possession.....	168
Appeal:	
Bond for Costs on.....	1167
Cross-Appellant's Statement of Points on.....	1182
Notice of.....	1164, 1165
Order Extending Time to File Record and Docket Cause on.....	1168
Statement of Points on.....	1181
Appearance of Priest Rapids Irrigation District	141
Appellee and Cross-Appellant's Designation of Record	1176

INDEX	PAGE
Bond for Costs on Appeal.....	1167
Certificate of Clerk.....	1179
Certified Copy of Letter of Secretary of War, Dated May 4, 1944, Authorizing and Direct- ing Declaration of Taking No. 99.....	81
Cross-Appellant's Statement of Points.....	1182
Cross-Appellant's Statement of Points on Appeal	1174
Declaration of Taking No. 99.....	119
Schedule "A".....	122
Schedule "B"—Tract Map.....	128a
Defendants' Requested Instructions.....	1125
Demurrer to Amended Answer.....	191
Demurrer to Answer and Cross-Complaint of Priest Rapids Irrigation District.....	173
Designation of Record.....	1170
First Amended Answer and Petition for Pay- ment of Compensation.....	182
Judgment on Verdict.....	1147
Judgment Ordering Payment of Bonds of the State of Washington.....	145
Judgment Ordering Payment of Bonds to Em- ily Corbett.....	158
Judgment Ordering Payment of Bonds to Fire- men's Relief and Pension Board.....	151
Memorandum of Court Sustaining Demurrer..	175

INDEX	PAGE
Motion for Appointment of Trustee or Receiver and for Restraining Order.....	221
Exhibit A—Summons	235
Complaint	237
Certificate	251
Exhibit B—Summons	252
Complaint	253
Certificate	267
Letter to Mr. Bernard H. Ramsey, Dated 4/16/46, 4/17/46.....	230
Letter to Mr. Bernard H. Ramsey, Dated 5/1/46, 5/2/46.....	232
Motion for Leave to Intervene.....	205
Complaint Intervention	206
Motion for Order Allowing State of Washington to Intervene.....	37
Affidavit in Support of Motion for Order Allowing State of Washington to Intervene	44
Affidavit in Support of Motion of the State of Washington for an Order Allowing Said State to Intervene.....	39
Exhibit A—Decree	45
Certificate	58
Exhibit B—Certificate and Bond No. 52..	60
Exhibit C—Certificate No. 8119.....	67
Motion for Order Amending Judgment on Verdict by Striking.....	1159

INDEX	PAGE
Motion for Priest Rapids Irr. District re Sequence of Trial.....	33
Motion for Right of Immediate Possession....	10
Motion for Right of Immediate Possession on Amended Petition	25
Names and Addresses of Attorneys of Record..	1
Notice of Appeal.....	1164, 1165
Notice of Hearing on Motion to Amend Judgment on Verdict by Striking.....	1160
Offer of Proof of the Priest Irrigation District	741
Oral Opinion of Court, 3/7/47.....	1133
Order Allowing State of Washington to Intervene	68
Order Amending Judgment and Directing Substitution of Paragraph.....	1161
Order Denying Motion for Appointment of Trustee or Receiver and for Restraining Order	293
Order Denying Motion for Leave to Intervene.	290
Order Directing Payment of Balance on Deposit to Priest Rapids Irr. Dist.....	218
Order Extending Time for Hearing on Demurrer	220
Order Extending Time to File Record and Docket Cause on Appeal.....	1168

INDEX	PAGE
Order for Jury View.....	295
Order Granting Right of Immediate Possession, Filed April 22, 1943.....	27
Order Granting Right of Immediate Posses- sion, Filed Feb. 23, 1943.....	12
Order on Declaration of Taking.....	131
Order Overruling Demurrer.....	292
Order Sustaining Demurrer.....	181
Order to Show Cause.....	268
Petition for Condemnation.....	2
Certified Copy of Letter of Secretary of War, dated Feb. 18, 1943, Authorizing and Directing Petition for Condemna- tion	8
Petition of Priest Rapids Irr. Dist. for Pay- ment of Balance on Deposit.....	216
Petitioner's Points and Authorities Upon De- murrer to Amended Answer.....	192
Petitioner's Requested Instructions.....	1130
Proposed Judgment on Verdict.....	1138
Record of Proceedings at the Trial.....	296
Court's Instructions	1098
Defendants' Exceptions	1109
Petitioner's Exceptions.....	1116
Special Interrogatory.....	1123
Verdict	1123

	INDEX	PAGE
Witnesses, Defendants':		
Dibble, Barry		
—direct	767
—cross	811
—redirect	836, 849
—recross	841, 850
Hall, Gerald D.		
—direct	486
—cross	535
—redirect	550
Picatti, Joseph S.		
—direct	569
Reierson, R. S.		
—direct	726, 747
—cross	747
—redirect	754
Salvini, B.		
—direct	308, 342, 384, 403, 408, 760
—voir dire	399
—cross	416, 764
Stevens, J. C.		
—direct	573, 614, 630, 654
—cross	655
—redirect	716
—recross	724
Tinling, Hugh B.		
—direct	430, 442, 556
—cross	478, 562

INDEX

PAGE

Witnesses, Defendant's—(Continued):

Yeager, Silas E.

—direct	311
—cross	334
—redirect	338

Witnesses, Defendants' (Rebuttal):

Dibble, Barry

—direct	1087
—cross	1088

Hall, Gerald D.

—direct	1089
—cross	1092

Webber, William S.

—direct	1082
—cross	1084

Witnesses, Plaintiff's:

Kurtichanof, L. E.

—direct	931, 946, 978, 1013, 1028
—voir dire ex by Mr. Powell.	944, 1012
—cross	1036

Miller, Marc C.

—direct	906
—cross	916
—redirect	929

Reierson, R. S.

—direct	882
—cross	895
—redirect	901
—recross	903

INDEX	PAGE
Witnesses, Plaintiff's—(Continued):	
Salvini, B.	
—direct	853
—cross	876
—redirect	878
Return to Order to Show Cause.....	270
Exhibit A—Special Appearance by Petitioner, United States of America Under Motion to Quash and Dismiss.....	273
Certificate	275, 276, 278
Demurrer	276
Order Overruling Demurrer and Denying Motion to Quash and Dismiss.....	277
Special Interrogatory.....	1132
Statement of Points and Designation of Record	1181
Statement of Points on Appeal.....	1169
Stipulation	1132
Stipulation Fixing Compensation of Emily Corbett	155
Stipulation Fixing Compensation of Priest Rapids Irr. Dist. Bonds to Firemen's Relief and Pension Board	147
Stipulation Fixing Compensation of State of Washington Bonds.....	142

INDEX

PAGE

Transcript of Proceedings in Court's Chambers 4-26-44	100
Transcript of Proceedings (Excerpt) of October 12, 1943.....	84
Transcript of Proceedings re Oral Opinion Upon Conclusion of Arguments on Motions and Demurrers on 6/1/46.....	279
Verdict	1131



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Attorneys for Defendant, Appellee and
Cross-Appellant.

In the District Court of the United States for the
Eastern District of Washington, Southern
Division

No. 128

UNITED STATES OF AMERICA,

Petitioner,

vs.

CLEMENTS P. ALBERTS,

Defendant.

PETITION FOR CONDEMNATION

Comes now the petitioner, the United States of America, by its undersigned attorneys, acting under and by direction of the Attorney General of the United States, and alleges as follows:

I.

The Secretary of War of the United States, for military purposes, has undertaken the acquisition of the certain property hereinafter described, pursuant to and in accordance with the provisions contained in the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 58; 50 U.S.C. sec. 171), and March 27, 1942 (Public Law 507—77th Congress), which acts authorize the acquisition of land for military purposes, and the Act of Congress approved July 2, 1942 (Public Law 649—77th Congress), which act appropriated funds for such purposes.

II.

That said property is required for use in connection with the establishment of the Gable Project, for a military reservation and for other military uses incident thereto. The property herein described is necessary adequately to provide for such purposes and has been selected by said Secretary of War for acquisition by the United States for the aforesaid uses, and the petitioner in good faith intends to use said property therefor.

III.

The property sought to be acquired in these proceedings is situate in the above named district and division and is described as follows, to-wit:

The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines, in and to the following described lands, to-wit:

Area "A"

Beginning at the intersection of the East line of Section 31, T. 13 N. R. 28 E., with the Southerly or right bank of the Columbia River; thence

Meandering in a Northwesterly direction along the south Bank of the Columbia River to its intersection with the North-South center line of Sec. 4 T. 13 N. R. 25 E.; thence;

In a Southerly direction along the North-South center line of Secs. 4, 9, 16, and 21, to the S $\frac{1}{4}$ corner of Sec. 21; thence;

East along the South line of Sec. 21 to its Southeast corner; thence;

South along the West line of Sec. 27 and 34 to the Southwest corner of Sec. 34; T. 13 N. R. 25 E.; thence; [2*]

East along the North line of Sec. 4, T. 12 N. R. 25 E. to the Northeast corner of Sec. 4; thence;

South along the West line of Secs. 3, 10, 15, 22, 27 to the Southwest corner of Sec. 27; thence;

East along the South line of Secs. 27 and 26 to the Southeast corner of Sec. 26; thence;

South along the West line of Sec. 36 to its Southwest corner; thence;

East along the South line of Sec. 26, T. 12 N., R. 25 E. and Sec. 31, T. 12 N. R. 26 E., to the Southeast corner of Sec. 31, thence;

South along the West line of Sec. 5, T. 11 N. R. 26 E., to its Southwest corner; thence;

East along the South line of Sec. 5 and 4 to the Southeast corner of Sec. 4; thence;

South along the West line of Sec. 10 to its Southwest corner; thence;

East along the South line of Secs. 10 and 11 to the Southeast corner of Sec. 11; thence;

North along the East line of Sec. 11 to its Northeast corner; thence;

East along the South line of Sec. 1 to its Southeast corner; thence;

North along the East line of Sec. 1 to its Northeast corner; thence;

* Page numbering appearing at foot of page of Reporter's certified Transcript of Record.

East along the South line of Sec. 31, T. 12 N. R. 27 E. to the Southeast corner of Sec. 31; thence;

North along the East line of Sec. 31 to its Northeast corner; thence;

East along the South line of Sec. 29 to its Southeast corner; thence;

North along the East line of Sec. 29 to its Northeast corner; thence;

East along the South line of Sec. 21 to its Southeast corner; thence;

North along the East line of Sec. 21 to its Northeast corner; thence;

East along the South line of Sec. 15 to its Southeast corner; thence;

North along the East line of Sec. 15 to its Northeast corner; thence;

East along the South line of Sec. 11 to its Southeast corner; thence;

North along the East line of Sec. 11 to its Northeast corner; thence;

East along the South line of Sec. 1, T. 12 N. R. 27 E. and Sec. 6, T. 12 N., R. 28 E., to the Southeast corner of Sec. 6; thence;

North along the East line of Sec. 6, T. 12 N., R. 28 E., and Sec. 31, T. 13 N., R. 28 E. to its intersection with the Southerly bank of the Columbia River to the point of beginning.

Said lands are situate in Benton County, Washington, and contain 176,323 acres, more or less.

Area "D"

Beginning at the intersection of the North line of Section 2, Township 10 North, Range 28 East,

West Meridian with the Westerly or right bank of the Columbia River; thence in a Southerly direction meandering along the right bank of the Columbia River to its intersection with the South line of Section 20, Township 9 North, Range 29 East; thence West along the South line of Sections 20 and 19, Township 9 North, Range 29 East and Sections 24 and 23, Township 9 North, Range 28 East to the Southwest corner of Section 23; thence North along the West line of Section 23 to its Northwest corner; thence West along the South line of Section 15, and 16 to the Southwest corner of Section 16; thence North along the West line of Sections 16, 9 and 4, Township 9 North, Range 28 East, and Sections 33, 28, 21, 16, 9 and 4, Township 10 North, Range 28 East to the Northwest corner of Section 4; thence East along the North line of Sections 4, 3 and 2 to the point of beginning.

Said land contains 17,510 acres, more or less, and is situate in Benton County, Washington. [3]

Wherefore, your petitioner prays:

1. That the purpose of this condemnation be adjudicated to be a public use.
2. That a jury be empaneled to fix and determine a just and proper award and compensation for the property herein described, or in case a jury be waived, then that the compensation to be paid as aforesaid be ascertained and determined by the court or a judge thereof, and that the parties entitled to receive such compensation to be determined thereby.

3. That the property hereinabove described be decreed to be the property of the United States.
4. That the court grant such other relief as shall seem proper in the premises.

EDWARD N. CONNELLY,
United States Attorney.

HARVEY ERICKSON,
Assistant United States
Attorney.

HART SNYDER,
Special Attorney, Depart-
ment of Justice.
Attorneys for Petitioner.

United States of America,
Eastern District of Washington—ss.

Hart Snyder, being first duly sworn, upon oath deposes and says: that he is a duly appointed, qualified and acting Special Attorney for the Department of Justice, and as such makes this verification; that he has read the foregoing petition for condemnation, knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

HART SNYDER.

Subscribed and sworn to before me this 23 day of February, 1943,

[Seal] A. A. LaFRAMBOISE,
Clerk, United States District Court for the
Eastern District of Washington.

AUTHORIZING AND DIRECTING PETITION
FOR CONDEMNATION

February 18, 1943

The Honorable
The Attorney General
Washington, D. C.

Dear Mr. Attorney General:

It is necessary and advantageous to the interest of the United States that certain lands situated in Benton County, State of Washington, be acquired for use in connection with the establishment of the Gable project.

Therefore, pursuant to the provisions of the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917, (40 Stat. 241), April 11, 1918 (40 Stat. 518, 50 U.S.C. sec. 171), and March 27, 1942 (Public Law 507-77th Congress), which acts authorize the acquisition of land for military or other war purposes, and the Act of Congress approved July 2, 1942 (Public Law 649-77th Congress), which act appropriated funds for such purposes, it is requested that you cause the necessary proceedings to be instituted for the condemnation of the fee simple title to the lands above referred to, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines. Said lands aggregate 193,833 acres, more or less, and are more particularly described in the inclosed Exhibit "A". The names and addresses of the purported owners of said lands are set forth in the inclosed Exhibit "B".

The Act of Congress approved July 2, 1942, *supra*, appropriated funds to acquire the lands under consideration.

The aforementioned lands are to be utilized for the establishment of a military reservation, and for other military uses incident thereto, and the utmost haste in expediting this project is vital to the successful prosecution of the war. It is requested that, pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507-77th Congress), you procure an order of the court granting immediate possession of the aforesaid lands.

Appraisal reports and title evidence are being obtained under the supervision of Lt. Col. J. Mortimer Clark, Division Real Estate Officer, Pacific Division, 19 West South Temple Street, Salt Lake City, Utah, and the probable date of availability of appraisal reports and title evidence can be obtained by your field representatives from the Division Real Estate Officer. It is further requested that a copy of the petition be furnished direct to Lt. Col. Clark.

Inclosed herewith are two additional copies of Exhibits "A" and "B". Also enclosed is one copy of map designating the aforesaid lands. Additional copies of the map will be forwarded to you under separate cover.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

3 Inclosures:

1—Map

2—Exhibit “A” (in trip)

3—Exhibit “B” (in trip)

Pursuant to T. 28 U.S. Code, Sec. 661, I certify this to be a true copy of the original record in this Department.

[Seal]

NORMAN U. LITTELL,

Assistant Attorney General,

Lands Division, Department of Justice.

[Endorsed]: Filed February 23, 1943.

[Title of District Court and Cause.]

MOTION FOR RIGHT OF IMMEDIATE
POSSESSION

Comes now the petitioner herein and respectfully moves the court for an order granting the right of immediate possession, pursuant to the provisions of Title II, Section 201 of the “Second War Powers Act, 1942”, being Public No. 207, 77th Congress, approved March 27, 1942. This motion is based on the files and records herein and the following affidavit.

EDWARD M. CONNELLY,

United States Attorney.

HARVEY ERICKSON,

Ass't United States Attorney.

HART SNYDER,

Special Attorney, Department of Justice.

United States of America,
Eastern District of Washington—ss.

Hart Snyder, being duly sworn, on oath says: that he is a special attorney for the Department of Justice; that the property described in the petition for condemnation herein is being acquired in time of war for military purposes at the request of the Secretary of War; that as provided in Title II, Section 201 of the "Second War Powers Act, 1942", being Public No. 507, 77th Congress, approved March 27, 1942, immediate possession of said property to the extent of the interest described in said petition is required in order that said property may be occupied, used and improved for [6] the purposes described in said petition; that an order should be entered herein granting to the petitioner the right of such immediate possession.

HART SNYDER,

Subscribed and sworn to before me this 23 day of February, 1943.

[Seal] A. A. LaFRAMBOISE,
Clerk, United States District Court, Eastern
District of Washington.

[Endorsed]: Filed February 23, 1943.

[Title of District Court and Cause.]

ORDER GRANTING RIGHT OF
IMMEDIATE POSSESSION

This matter having come on regularly this day upon petitioners' motion and affidavit for right of immediate possession and it appearing therefrom that the property described in the petition for condemnation is being acquired in time of war for military, naval, or other war purposes and that immediate possession thereof to the extent of the interest hereinafter described is required in order that said property may forthwith be occupied, used and improved for the purpose described in said petition and as provided in Title II, Section 201 of the "Second War Powers Act, 1942", being Public No. 507, 77th Congress, approved March 27, 1942, now therefore, it is hereby

Ordered that the right of immediate possession is hereby granted to the petitioner herein, the United States of America, of the property hereinafter described. It is further ordered that when the names and addresses of record owners and parties in possession are obtained, notice of the entry of this order shall be given to record owners and to any person who is, on this day, actually occupying or cultivating said described lands, such notice to be given by depositing certified copies hereof in the United States registered mail in envelopes addressed to each such person; provided, that when the person so to be notified are husband and wife, one such notice addressed jointly to both shall be sufficient.

Said property is described as follows, to-wit:

The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines, in and to the following described lands, to-wit:

Area "A"

Beginning at the intersection of the East line of Section 31, T. 13 N. R. 28 E., with the Southerly or right bank of the Columbia River; thence

Meandering in a Northwesterly direction along the south Bank of the Columbia River to its intersection with the North-South center line of Sec. 4 T. 13 N. R. 25 E.; thence;

In a Southerly direction along the North-South center line of Secs. 4, 9, 16, and 21, to the S $\frac{1}{4}$ corner of Sec. 21; thence;

East along the South line of Sec. 21 to its Southeast corner; thence;

South along the West line of Sec. 27 and 34 to the Southwest corner of Sec. 34; T. 13 N. R. 25 E.; thence;

East along the North line of Sec. 4, T. 12 N. R. 25 E. to the Northeast corner of Sec. 4; thence;

South along the West line of Secs. 3, 10, 15, 22, 27 to the Southwest corner of Sec. 27; thence;

East along the South line of Secs. 27 and 26 to the Southeast corner of Sec. 26; thence;

South along the West line of Sec. 36 to its Southwest corner; thence;

East along the South line of Sec. 36, T. 12 N., R. 25 E. and Sec. 31, T. 12 N. R. 26 E., to the Southeast corner of Sec. 31, thence;

South along the West line of Sec. 5, T. 11 N. R. 26 E., to its Southwest corner; thence;

East along the South line of Sec. 5 and 4 to the Southeast corner of Sec. 4; thence;

South along the West line of Sec. 10 to its Southwest corner; thence;

East along the South line of Secs. 10 and 11 to the Southeast corner of Sec. 11; thence;

North along the East line of Sec. 11 to its Northeast corner; thence;

East along the South line of Sec. 1 to its Southeast corner; thence;

North along the East line of Sec. 1 to its Northeast corner; thence;

East along the South line of Sec. 31, T. 12 N. R. 27 E. to the Southeast corner of Sec. 31; thence;

North along the East line of Sec. 31 to its Northeast corner; thence;

East along the South line of Sec. 29 to its Southeast corner; thence;

North along the East line of Sec. 29 to its Northeast corner; thence;

East along the South line of Sec. 21 to its Southeast corner; thence;

North along the East line of Sec. 21 to its Northeast corner; thence;

East along the South line of Sec. 15 to its Southeast corner; thence;

North along the East line of Sec. 15 to its North-east corner; thence;

East along the South line of Sec. 11 to its South-east corner; thence;

North along the East line of Sec. 11 to its North-east corner; thence;

East along the South line of Sec. 1, T. 12 N. R. 27 E. and Sec. 6, T. 12 N., R. 28 E., to the Southeast corner of Sec. 6; thence;

North along the East line of Sec. 6, T. 12 N., R. 28 E., and Sec. 31, T. 13 N., R. 28 E. to its intersection with the Southerly bank of the Columbia River to the point of beginning.

Said lands are situate in Benton County, Washington, and contain 176,323 acres, more or less.

Area "D"

Beginning at the intersection of the North line of Section 2, Township 10 North, Range 28 East, West Meridian with the Westerly or right bank of the Columbia River; thence in a Southerly direction meandering along the right bank of the Columbia River to its intersection with the South line of Section 20, Township 9 North, Range 29 East; thence West along the South line of Sections 20 and 19, Township 9 North, Range 29 East and Sections 24 and 23, Township 9 North, Range 28 East to the Southwest corner of Section 23; thence North along the West line of Section 23 to its Northwest corner; thence West along the South line of Section 15, and 16 to the Southwest corner of Section 16; thence North along the West line of

Sections 16, 9 and 4, Township 9 North, Range 28 East, and Sections 33, 28, 21, 16, 9 and 4, Township 10 North, Range 28 East to the Northwest corner of Section 4; thence East along the North line of Sections 4, 3 and 2 to the point of beginning.

Said land contains 17,510 acres, more or less, and is situate in Benton County, Washington.

Dated this 23 day of Feburary, 1943.

L. B. SCHWELLENBACH,
United States District Judge.

Presented by:

HART SNYDER,
Special Attorney for the De-
partment of Justice.

[Endorsed]: Filed February 23, 1943.

[Title of District Court and Cause.]

AMENDED PETITION
FOR CONDEMNATION

Comes now the petitioner, the United States of America, by its undersigned attorneys, acting under and by direction of the Attorney General of the United States, and alleges as follows:

I.

The Secretary of War of the United States, for military purposes, has undertaken the acquisition of the certain property hereinafter described, pur-

suant to and in accordance with the provisions contained in the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918, (40 Stat. 518; 50 U.S.C. sec. 171), and March 27, 1942 (Public Law 507-77th Congress), which acts authorize the acquisition of land for military purposes, and the Act of Congress approved July 2, 1942 (Public Law 649-77th Congress), which act appropriated funds for such purposes.

II.

That said property is required for use in connection with the establishment of the Hanford Engineering Project, for a military reservation and for other military uses incident thereto. The property herein described is necessary adequately to provide for such purposes and has been selected by said Secretary of War for acquisition by the United States for the aforesaid uses, and the petitioner in good faith intends to use said property therefor.

III.

The property sought to be acquired in these proceedings is situate in the above named district and is described as follows, to-wit:

The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, excepting, however, all existing easements for railroad purposes in favor of the Chicago, Milwaukee, St. Paul

and Pacific Railroad Company, which easements in favor of said Chicago, Milwaukee, St. Paul and Pacific Railroad Company are included in the property to be acquired in these proceedings, in and to the following described lands, to-wit:

Area "A"

Beginning at the intersection of the East line of Section 31, Township 13 North, Range 28 East, with the Southerly or right bank of the Columbia River;

Thence meandering in a Northwesterly direction along the South bank of the Columbia River to its intersection with the North-South center line of Section 5, Township 13 North, Range 25 East;

Thence in a Southerly direction along the North-South center line of Sections 5, 8, 17 and 20 to the South quarter corner of Section 20;

Thence East along the South line of Section 20 to its Southeast corner;

Thence South along the West line of Section 28 and 33 to the Southwest corner of Section 33; Township 13 North, Range 25 East;

Thence East to the Northwest corner of Section 4, Township 12 North, Range 25 East;

Thence South along the West line of Sections 4, 9, 16 and 21 to the Southwest corner of Section 21; thence East to the Southeast corner of Section 21; thence South to the Southwest corner of Section 27, Township 12 North, Range 25 East;

Thence East along the South line of Section 27 and 26 to the Southeast corner of Section 26, Township 12 North, Range 25 East;

Thence South along the West line of Section 36 to its Southwest corner;

Thence East along the South lines of Section 36 Township 12 North, Range 25 East and Section 31, Township 12 North, Range 26 East, to the Southeast corner of Section 31;

Thence South along the West line of Section 5, Township 11 North, Range 26 East, to its Southwest corner;

Thence East along the South lines of Sections 5 and 4, Township 11 North, Range 26 East, to the Southeast corner of Section 4;

Thence South along the West line of Section 10, Township 11 North, Range 26 East to its Southwest corner; [12]

Thence East along the South lines of Sections 10 and 11 to the Southeast corner of Section 11;

Thence North along the East line of Section 11 to its Northeast corner;

Thence East along the South line of Section 1, Township 11 North, Range 26 East, to its Southeast corner;

Thence North along the East line of Section 1 to its Northeast corner;

Thence East along the South line of Section 31, Township 12 North, Range 27 East to the Southeast corner of Section 31;

Thence North along the East line of Section 31 to its Northeast corner;

Thence East along the South line of Section 29, Township 12 North, Range 27 East, to its Southeast corner;

Thence North along the East line of Section 29 to its Northeast corner;

Thence East along the South line of Section 21, Township 12 North, Range 27 East to its Southeast corner;

Thence North along the East line of Section 21 to its Northeast corner;

Thence East along the South line of Section 15, Township 12 North, Range 27 East to its Southeast corner;

Thence North along the East line of Section 15 to its Northeast corner;

Thence East along the South line of Section 11, Township 12 North, Range 27 East to its Southeast corner;

Thence North along the East line of Section 11 to its Northeast corner;

Thence East along the South lines of Section 1, Township 12 North, Range 27 East, and Section 6, Township 12 North, Range 28 East, to the Southeast corner of Section 6;

Thence North along the East lines of Section 6, Township 12 North, Range 28 East and Section 31, Township 13 North, Range 28 East to its intersection with the Southerly bank of the Columbia River, the point of beginning.

Said lands are situate in Benton County, Washington, and contain 182,723 acres, more or less.

Area "D"

Beginning at the intersection of the North line of Section 2, Township 10 North, Range 28 East,

W.M., with the Westerly or right bank of the Columbia River;

Thence in a Southerly direction meandering along the right bank of the Columbia River to its intersection with the North line of the Yakima River;

Thence Westerly and Northwesterly following the meanders of the Yakima River to its North-westernmost corner of intersection with the West line of Section 4, Township 9 North, Range 28 East;

Thence North along the West line of said Section 4 and continuing Northerly along section lines through Township 10 North, Range 28 East to the Northwest corner of Section 4, Township 10 North, Range 28 East, thence Easterly along section lines to the point of beginning.

Said lands contain 17,000 acres, more or less, and are situate in Benton County, Washington.

Area "E"

Sections 7, 8, 9, 16, 17 and 18, all in Township 13 North, Range 24 East.

Also the West half of Section 10 and the West half of Section 15, all in Township 13 North, Range 24 East.

Also Sections 1, 2 and 3, all in Township 13 North, Range 23 East.

Said lands are situate in Benton, Yakima and Grant Counties Washington, and contain 6,400 acres, more or less. [14]

Wherefore, your petitioner prays:

1. That the purpose of this condemnation be adjudicated to be a public use.
2. That a jury be empaneled to fix and determine a just and proper award and compensation for the property herein described, or in case a jury be waived, then that the compensation to be paid as aforesaid be ascertained and determined by the court or a judge thereof, and that the parties entitled to receive such compensation be determined thereby.
3. That the property hereinabove described be decreed to be the property of the United States.
4. That the court grant such other relief as shall seem proper in the premises.

EDWARD J. CROWLEY.

JOSEPH L. THOMAS,

Special Attorneys for the De-
partment of Justice.

Attorneys for Petitioner.

United States of America,
Eastern District of Washington—ss.

Edward J. Crowley, being first duly sworn, upon oath deposes and says: That he is a duly appointed, qualified and acting Special Attorney for the Department of Justice, and as such makes this verification; that he has read the foregoing amended petition for condemnation, knows the contents

thereof and that the same is true to the best of his knowledge, information and belief.

EDWARD J. CROWLEY.

Subscribed and sworn to before me this 22nd day of April, 1943.

[Seal] A. A. LaFRAMBOISE,

Clerk, United States District Court for the Eastern District of Washington.

Filed April 22, 1943.

AUTHORIZING AND DIRECTING AMENDED
PETITION FOR CONDEMNATION

April 12, 1943

The Honorable
The Attorney General
Washington, D. C.

Dear Mr. Attorney General:

Reference is made to the condemnation proceeding entitled United States vs. 193,833 acres of land, more or less, situate in Benton County, Washington, Clements P. Alberts, et al., now pending in the United States District Court for the District of Washington, to acquire certain lands for use in connection with the Hanford Engineering Works.

It has been administratively determined to be advantageous to the interest of the United States to amend the petition in condemnation and order of possession in order to correctly and fully describe all of the lands to be affected by this proceeding, and to further amend said petition and order to provide for the acquisition of certain existing easements for railroads in the lands involved.

It is requested, therefore, that you take the necessary action to amend the petition and order of possession to include all of the lands described in the attached Exhibit "A" as Areas "A", "D", and "E", and to further amend the petition and order of possession to set forth the following described estate to be acquired in said land: The fee simple title thereto, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, *excepting, for public utilities, for railroads and for pipe lines, excepting*, however, all existing easements for railroad purposes in favor of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Inclosed are two additional copies of Exhibit "A" and four copies of map designating the lands above referred to.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

Inclosures:

- 1—Exhibit "A" (in trip)
- 2—Map (4 copies)

Pursuant to T. 28, U.S. Code, Sec. 661, I certify this to be a true copy of the original record in this Department.

[Seal]

NORMAN U. LITTELL,
Assistant Attorney General
Lands Division, Department of Justice.

Filed April 22, 1943.

[Title of District Court and Cause.]

MOTION FOR RIGHT OF IMMEDIATE
POSSESSION ON AMENDED PETITION

Comes now the petitioner herein and respectfully moves the court for an order granting the right of immediate possession as to property not included in the order granting right of immediate possession entered in the above entitled proceedings on February 23, 1943. This motion is made pursuant to the provisions of Title II, Section 201 of the "Second War Powers Act, 1942," being Public No. 507, 77th Congress, approved March 27, 1942, and is based on the files and records herein and the following affidavit.

EDWARD J. CROWLEY,
JOSEPH L. THOMAS,

Special Attorneys for the
Department of Justice.

United States of America,
Eastern District of Washington—ss.

Edward J. Crowley, being first duly sworn, on oath says: That he is a special attorney for the Department of Justice; that the property described in the amended petition for condemnation herein is being acquired in time of war for military purposes at the request of the Secretary of War; that an order was entered herein on February 23, 1943, granting to the United States of America the right of immediate possession to all the property de-

scribed in the petition for condemnation filed herein on February 23, 1943; that as provided in Title II, Section 201 of the "Second War Powers Act, 1942," being Public No. 507, 77th Congress, approved March 27, 1942, immediate possession of said property not [17] included in said order granting the right of immediate possession, to the extent of the interest described in said amended petition, is required in order that said property not included in said order granting right of immediate possession may be occupied, used and improved for the purposes of said act and for the purposes described in said amended petition; that, as shown by the amended petition on file herein, additional property has been included in these proceedings; that an order should be entered herein granting to the petitioner the right of such immediate possession as to such property not included in said order granting right of immediate possession entered on February 23, 1943.

EDWARD J. CROWLEY.

Subscribed and sworn to before me this 22nd day of April, 1943.

[Seal]

A. A. LaFRAMBOISE,
Clerk, United States District
Court, Eastern District of
Washington.

[Endorsed]: Filed April 22, 1943. [18]

[Title of District Court and Cause.]

ORDER GRANTING RIGHT OF IMMEDIATE
POSSESSION AS TO ADDITIONAL
PROPERTY [19]

This matter having come on regularly this day upon petitioner's motion and affidavit for right of immediate possession, and it appearing therefrom that the property described in the amended petition for condemnation is being acquired in time of war for military, naval or other war purposes, and that immediate possession of the property described in the amended petition herein and not included in the order granting right of immediate possession entered herein on February 23, 1943, to the extent of the interest hereinafter described is required in order that said additional property may forthwith be occupied, used and improved for the purposes described in said amended petition and as provided in Title II, Section 201 of the "Second War Powers Act, 1942," being Public No. 507, 77th Congress, approved March 27, 1942, and it appearing that an order granting right of immediate possession was heretofore entered in the above entitled proceedings on February 23, 1943, as to part of the property hereinafter described, it is hereby

Ordered that the right of immediate possession is hereby granted to the petitioner herein, United States of America, as to that portion of the property hereinafter described for which possession was not heretofore granted by said order entered herein on

February 23, 1943, said right of possession hereby granted being in addition to that granted by said order of February 23, 1943.

It Is Further Ordered that when the names and addresses of record owners and parties in possession are obtained, notice of the entry of this order shall be given to record owners and to any person who is, on this day, actually occupying or cultivating said described lands which are not included in said order granting right of immediate possession entered herein on February 23, 1943.

It Is Further Ordered that such notice be given by depositing uncertified copies hereof in the United States mail, by ordinary mail, in envelopes addressed to each such person, provided, that when the persons so to be notified are husband and wife, one such notice addressed jointly to both shall be sufficient.

Said property is described as follows, to-wit: [20]

The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines, excepting, however, all existing easements for railroad purposes in favor of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, which easements in favor of said Chicago, Milwaukee, St. Paul and Pacific Railroad Company are included in the property to be acquired in these proceedings, in and to the following described lands, to-wit:

AREA "A"

Beginning at the intersection of the East line of Section 31, Township 13 North, Range 28 East, with the Southerly or right bank of the Columbia River;

Thence meandering in a Northwesterly direction along the South bank of the Columbia River to its intersection with the North-South center line of Section 5, Township 13 North, Range 25 East;

Thence in a Southerly direction along the North-South center line of Sections 5, 8, 17 and 20 to the South quarter corner of Section 20;

Thence East along the South line of Section 20 to its Southeast corner;

Thence South along the West line of Section 28 and 33 to the Southwest corner of Section 33; Township 13 North, Range 25 East;

Thence East to the Northwest corner of Section 4, Township 12 North, Range 25 East;

Thence South along the West line of Sections 4, 9, 16 and 21 to the Southwest corner of Section 21; thence East to the Southeast corner of Section 21; Thence South to the Southwest corner of Section 27, Township 12 North, Range 25 East;

Thence East along the South line of Section 27 and 26 to the Southeast corner of Section 26, Township 12 North, Range 25 East;

Thence South along the West line of Section 36 to its Southwest corner;

Thence East along the South lines of Section 36, Township 12 North, Range 25 East and Section 31, Township 12 North, Range 26 East, to the Southeast corner of Section 31;

Thence South along the West line of Section 5, Township 11 North, Range 26 East, to its Southwest corner;

Thence East along the South lines of Sections 5 and 4, Township 11 North, Range 26 East, to the Southeast corner of Section 4;

Thence South along the West line of Section 10, Township 11 North Range 26 East to its Southwest corner; [21]

Thence East along the South lines of Sections 10 and 11 to the Southeast corner of Section 11;

Thence North along the East line of Section 11 to its Northeast corner;

Thence East along the South line of Section 1, Township 11 North, Range 26 East, to its Southeast corner;

Thence North along the East line of Section 1 to its Northeast corner;

Thence East along the South line of Section 31, Township 12 North, Range 27 East to the Southeast corner of Section 31;

Thence North along the East line of Section 31 to its Northeast corner;

Thence East along the South line of Section 29, Township 12 North, Range 27 East, to its Southeast corner;

Thence North along the East line of Section 29 to its Northeast corner;

Thence East along the South line of Section 21, Township 12 North, Range 27 East to its Southeast corner;

Thence North along the East line of Section 21 to its Northeast corner;

Thence East along the South line of Section 15, Township 12 North, Range 27 East to its Southeast corner;

Thence North along the East line of Section 15 to its Northeast corner;

Thence East along the South line of Section 11, Township 12 North, Range 27 East to its Southeast corner;

Thence North along the East line of Section 11 to its Northeast corner;

Thence East along the South lines of Section 1, Township 12 North, Range 27 East, and Section 6, Township 12 North, Range 28 East, to the Southeast corner of Section 6;

Thence North along the East lines of Section 6, Township 12 North, Range 28 East and Section 31, Township 13 North, Range 28 East to its intersection with the Southerly bank of the Columbia River, the point of beginning.

Said lands are situate in Benton County, Washington, and contain 182,723 acres, more or less. [22]

AREA "D"

Beginning at the intersection of the North line of Section 2, Township 10 North, Range 28 East, W.M., with the Westerly or right bank of the Columbia River;

Thence in a Southerly direction meandering along the right bank of the Columbia River to its intersection with the North line of the Yakima River;

Thence Westerly and Northwesterly following the meanders of the Yakima River to its Northwestern-most corner of intersection with the West line of Section 4, Township 9 North, Range 28 East;

Thence North along the West line of said Section 4 and continuing Northerly along section lines through Township 10 North, Range 28 East to the Northwest corner of Section 4, Township 10 North, Range 28 East; thence Easterly along section lines to the point of beginning.

Said lands contain 17,000 acres, more or less, and are situate in Benton County, Washington.

AREA "E"

Sections 7, 8, 9, 16, 17 and 18, all in Township 13 North, Range 24 East.

Also the West half of Section 10 and the West half of Section 15, all in Township 13 North, Range 24 East.

Also Sections 1, 2 and 3, all in Township 13 North, Range 23 East.

Said lands are situate in Benton, Yakima and Grant Counties, Washington, and contain 6,400 acres, more or less.

Dated this 22nd day of April, 1943.

L. B. SCHWELLENBACH,
United States District Judge.

Presented by:

EDWARD J. CROWLEY,
Special Attorney for the
Department of Justice.

[Endorsed]: Filed April 22, 1943. [23]

[Title of District Court and Cause.]

MOTION ESTABLISHING SEQUENCE
OF TRIAL

Comes Now Priest Rapids Irrigation District and moves the Court for an order requiring and directing that the above entitled case be set down for trial as against this defendant in advance of the trial of any and all cases against owners of land within the boundaries of Priest Rapids Irrigation District, or that if cases of the United States against individual owners of land are tried in advance of the case against this defendant, the value of its assets described in the following affidavit, distributable to such individual owners, be excluded from consideration in the award of damages or compensation to be paid to such individual owners, for the reason that it will be impossible to determine the rights of said individuals at such trial and for the reason that it will be impossible to determine the value of the total assets of the district to be distributed until provision has been made for the payment out of the proceeds of such assets of the outstanding bonds of the district and any and all floating indebtedness of the district in the form of warrants or otherwise, and in support of its motion submits the files and records herein and the following affidavit.

MOULTON & POWELL,
Attorneys for Priest Rapids
Irrigation District.

Copy received May 15, 1943.

EDWARD J. CROWLEY,
Of Attorneys for Petitioner

In the District Court of the United States
For the Eastern District of Washington

United States of America,
Eastern District of Washington—ss.

M. M. Moulton, being first duly sworn, on oath states:

He makes this affidavit in support of the attached motion. He is one of the attorneys appearing herein for Priest Rapids Irrigation District; that said district is an irrigation district regularly organized under the laws of the State of Washington relating to the establishment and government of irrigation districts, particularly the Act of March 20, 1890, and laws supplemental thereto and amendatory thereof. That the district owns certain operating facilities, consisting principally of a hydro-electric power plant constructed at Priest Rapids on the Columbia River in Yakima County, together with transmission lines, pumps, motors, canals, and pipelines, which power plant is used in part for the generation of power for the delivery of water through its pumps and pipelines and canals upon land held in private ownership in the district. That said power plant is capable of generating, and does generate as operated by the district, a large volume of surplus electric energy, which surplus is sold by the district to the Pacific Power & Light Company on an existing contract which yields to the district a substantial net revenue over and above the cost of operation.

That it is claimed by engineers employed by the district that the generating capacity of said power plant is capable of being very substantially increased at a low cost. That said power plant, transmission lines, pumps, motors, pipelines and canals, including the power canal for the diversion of water from the Columbia River to the power plant, have a value which is unknown to affiant at this time, but which, upon estimates made by competent engineers, exceeds \$500,000.00. That upon liquidation and dissolution of Priest Rapids Irrigation District, which must follow the taking of its property by the United States, said [25] assets would belong to the owners of the land in the district and that said owners should not be deprived of their ownership and their right to share in the distribution of said assets by having their land taken from them and the title thereto vested in the United States until the value of said assets has been determined and the distribution thereof secured to the district land owners.

Affiant has been informed and believes, and upon such information and belief states, that the representatives of the United States who have been engaged in appraising the assets of the private land owners in the district have not taken into consideration in arriving at their values the existence of said power plant and district assets, and that they have not given to said privately owned lands a value which includes the value of the district assets.

Affiant further states that if the United States acquires title to the privately owned lands in the

district before the value of the district assets has been ascertained and distributed there would be a strong probability that the United States would as a matter of law become the owner, through the irrigation district, of all the district assets and would thus acquire title to those assets without compensation being paid to the existing land owners.

Affiant further states that large numbers of landowners in the district are unwilling to sign voluntary agreements providing for the sale of their lands to the United States without protection against the United States acquiring the individual's interest in the district assets without compensation. That if the value of the district assets is ascertained and made unconditionally available to the landowners in addition to the value of their lands, it is the belief of affiant that all landowners in the district will accept the appraised value placed upon their lands by the Government, except in those cases where said value is substantially below the reasonable value.

Affiant further states that the district has an outstanding bonded indebtedness in the approximate amount of \$190,000.00, and that the bonds evidencing said indebtedness are a lien on all of the aforesaid [26] district assets and that it is necessary that the value of the district assets be determined in advance of the determination of the value of individual holdings in order that it may be known whether the bonded indebtedness of the district will be paid and discharged out of the liquida-

tion of the assets of the district instead of out of further assessments levied therefor or out of deductions from the amount to be paid by the United States to the landowners. That under the laws of the State of Washington every acre of land in the district is liable for assessment for the payment of the outstanding bonds of the district until such bonds are paid in full and that said bonds cannot be paid in full except out of the existing assets of the district or out of further assessments levied therefor or by being deducted by the United States from the amount to be paid for the individual's land.

Affiant further states that the power plant referred to herein, and other instrumentalities, facilities and property of the district are situated within the area or areas proposed to be taken by the United States under the various declarations for immediate possession.

M. M. MOULTON.

Subscribed and sworn to before me this 14th day of May, 1943.

[Seal]

FLOYCE SMITH,

Notary Public in and for the State of Washington,
residing at Kennewick.

[Endorsed]: Filed May 15, 1943. [27]

[Title of District Court and Cause.]

MOTION FOR ORDER ALLOWING STATE OF
WASHINGTON TO INTERVENE

Comes now the State of Washington, acting by and through its attorney general and Jerome K.

Kuykendall and Harold A. Pebbles, his assistants, and respectfully moves for the entry of an order by this court allowing the State of Washington to intervene in the above entitled action and join in the pending motion of Priest Rapids Irrigation District establishing sequence of trial, upon the ground and for the reason that the state's claim and the main action have questions of law and fact in common and representation of the state's interest by existing parties may be inadequate and the state may be bound by a judgment in the action.

This motion is based upon the records and files herein and upon the affidavits of Ed Davis, as director of the Department of Conservation and Development of the State of Washington, and Harold A. Pebbles, assistant attorney general of and for said state, hereunto attached, now referred to and by such reference incorporated in and made an integral part hereof.

Dated this 28th day of May, 1943.

SMITH TROY,

The Attorney General,

JEROME K. KUYKENDALL,

Assistant Attorney General,

HAROLD A. PEBBLES,

Assistant Attorney General,

Attorneys for the State
of Washington. [28]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION OF
THE STATE OF WASHINGTON FOR AN
ORDER ALLOWING SAID STATE TO
INTERVENE

State of Washington,
County of Thurston—ss.

Ed Davis, being first duly sworn, on oath deposes and says:

That he is the duly appointed, qualified and acting director of the Department of Conservation and Development of the State of Washington and as such director hereby makes this affidavit for and on behalf of said state in support of its motion for order allowing said state to intervene and join in the motion of the Priest Rapids Irrigation District to establish sequence of trial in connection with condemnation by the United States of certain lands in Benton County; that all of the facts herein stated are particularly within the knowledge of this affiant as custodian of certain documents and records of the state relative to the formation, existence and operation of the aforesaid Priest Rapids Irrigation District;

That the said irrigation district was regularly organized under Secs. 7417 et seq., Remington's Revised Statutes of Washington, as amended to date, now is in existence and operating as such district and owns valuable real and personal property consisting of a hydroelectric power plant, transmis-

sion lines, pumps, motors, canals, pipelines, materials, tools, and equipment for operating all thereof, and the right to divert water for purposes of said district; [29]

That as authorized by law, and acting under and by virtue of the aforesaid secs. 7417, et seq., Remington's Revised Statutes of Washington, the aforesaid Priest Rapids Irrigation District on July 1, 1940, issued its general obligation and power revenue bonds in a total amount of one hundred eighty-nine thousand and 00/100 dollars (\$189,000.00) of said bonds, such issue being of bonds numbered respectively 1 to 189, both numbers inclusive, and being each in the amount of one thousand and 00/100 dollars (\$1,000.00);

That thereafter all proceedings for organization of the district and authorizing the issuance of sale of aforesaid bonds were judicially examined, approved and confirmed by the Superior Court of the State of Washington for Benton County. Copy of decree of such confirmation is hereunto attached, marked Exhibit "A", now referred to and by such reference incorporated in and made an integral part hereof;

That the State of Washington, as holder in due course, purchased one hundred seventy-three thousand and 00/100 dollars (\$173,000.00) worth of said bonds and said state now owns and has in its possession one hundred sixty-five thousand and 00/100 dollars (\$165,000.00) worth of said bonds, the same being numbered respectively 17 to 62, 66 to 100, and 106 to 189, all numbers inclusive, each such bond

being in the principal amount of one thousand and 00/100 dollars (\$1,000.00) and bearing interest to date of maturity on January 1, 1947, or until sooner called for payment; that a true, correct and certified photostatic copy of one of said bonds, the same being numbered 52, is hereunto attached, marked Exhibit "B", now referred to and by such reference incorporated in and made an integral part hereof;

That under and by virtue of the provisions of secs. 7414, et seq., Remington's Revised Statutes of Washington, all of the aforesaid bonds of the State of Washington constitute a preferred lien [30] upon all water rights and other property of the Priest Rapids Irrigation District and upon its canals, ditches, flumes, feeders, storage reservoirs, machinery, other works and improvements, and also said bonds constitute a lien against all revenue of the district derived through assessment or otherwise;

That this affiant is informed, believes and therefore states the facts to be that the United States of America, purporting to act under Title 50, Sec. 171 and Sec. 632, The Second War Powers Act, and under Title 40, Sec. 257, et seq., both titles of U.S.C.A., is acquiring by purchase or by condemnation all land within Priest Rapids Irrigation District but that the United States is not by purchase of, by condemnation acquiring, nor does it intend to acquire, the lands and property, either real or personal, belonging to the said district itself; that the United States has taken the position, and is asserting in the above entitled action, that by its

acquisition of all other privately owned lands in the district it has thereby acquired the said district and all of its property, both real and personal;

That in addition to the foregoing, this affiant is informed, believes and therefore states the facts to be that the United States of America, purporting to act as aforesaid, is likewise acquiring at forced sale or by condemnation all or practically all of the land surrounding the Priest Rapids Irrigation District;

That if the United States of America does obtain all of the land within and surrounding the Priest Rapids Irrigation District it will thereby totally damage and totally destroy the market value of the entire system of the said district and all of its property; that likewise the aforesaid bonds of the State of Washington will become valueless and the state will thereby lose the sum of one hundred sixty-five thousand and 00/100 dollars (\$165,000.00) plus interest, solely as a result of the acts of the United States of [31] America;

That, further, if the United States of America takes all of the land within the Priest Rapids Irrigation District it will thereby destroy the lien of the district against such property for assessments made and to be made for payment of bonded indebtedness as aforesaid due the State of Washington;

That if the United States takes the property of the district it is necessary that the value of the assets thereof be determined in advance of any determination of value of the landowner in this case, or in any other case involving lands within the district, in order to determine whether the aforesaid

bonds of the State of Washington will be paid and discharged with the compensation for the taking by the United States if any such taking occurs, instead of out of further assessments levied therefor or out of deductions from the amounts to be paid various landowners within the district, including the above-named defendant; that under the laws of this state every acre of land is liable for assessment for payment of the aforesaid bonds until they are paid in full and said bonds cannot be paid in full except out of existing property and assets of the district or out of further assessments levied for such payment or by the same being deducted from the several amounts paid for lands within the district;

That the State of Washington has no other plain, speedy or adequate remedy in the premises and it will be irreparably damaged and injured if the United States is allowed to proceed without a separate trial of and a determination of just compensation for all property and assets of the Priest Rapids Irrigation District;

That an exemplified copy of the capacity and authority of this affiant to act as an officer of and for the State of Washington is hereunto attached, marked Exhibit "C", now referred to and by such reference incorporated in and made an integral part hereof.

ED DAVIS.

Subscribed and sworn to before me this 28th day of May, 1943.

[Notarial Seal] MARIE STROOK,
Notary Public in and for the State of Washington,
residing at Olympia, Wash. [33]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR
ORDER ALLOWING STATE OF WASH-
INGTON TO INTERVENE

State of Washington,
County of Thurston—ss.

Harold A. Pebbles, being first duly sworn, on oath deposes and says:

That he is duly appointed, qualified and acting assistant attorney general of and for the State of Washington and makes this affidavit for and on its behalf in support of the motion of the state for entry of an order authorizing its intervention and joining with the Priest Rapids Irrigation District in a motion to establish sequence of trial;

That he has read the affidavit of Ed Davis, director of the Department of Conservation and Development of the State of Washington, in support of the state's said motion to intervene, hereunto attached and hereby refers to and incorporates herein such affidavit for all purposes;

That as shown by the aforesaid affidavit of Ed Davis, the State of Washington is a real party in interest and has interests in law and fact in common with the United States, the defendant Alberts, and with Priest Rapids Irrigation District in the pending motion to establish sequence of trial; that determination of the said motion last mentioned and any judgment entered in the above-entitled case, or any other case or cases involving land within [34]

the Priest Rapids Irrigation District, may adversely affect and become binding upon the State of Washington;

That any intervention allowed the State of Washington herein will neither hinder or delay this action nor prejudice the rights of any party thereto.

HAROLD A. PEBBLES.

Subscribed and sworn to before me this 28th day of May, 1943.

[Notarial Seal H. C. HIGGINS,
Notary Public in and for the State of Washington,
residing at Olympia, Wash. [35]

EXHIBIT A

In the Superior Court of the State of Washington
in and for Benton County

No. 6973

In the Matter of the Petition of B. Salvini, Wm. S. Webber and R. S. Reirson, Directors of Priest Rapids Irrigation District, praying that the proceedings for the issuance and sale of bonds of said District and the use of a portion of said bonds for refunding purposes, or the exchange of a portion of said bonds for outstanding bond, or the sale of a portion of said bonds for the payment of outstanding bonds authorized by a special election held on June 29, 1940, and other proceedings, be examined, approved and confirmed by the above entitled Court.

R. J. ROBERTS,

Answering Defendant.

DECREE

The above entitled matter coming on for trial before the Court at the Court House in Prosser, Benton County, Washington, this 15th day of August, 1940, upon the petition of B. Salvini, Wm. S. Webber and R. S. Reirson, Directors of Priest Rapids Irrigation District, praying that certain proceedings and certain contracts and matters related thereto be examined, approved and confirmed by the Court, the petitioners appearing in person and by Moulton & Powell, their attorneys, and no appearance having been made or entered in any manner or form whatsoever by any interested person or parties, except R. J. Roberts appearing through his attorneys O'Brien & Salvini, by answer on his own behalf and on behalf of all other persons and parties similarly situated, and the Court having received the evidence offered by and on behalf of the petitioners and by and on behalf of the defendant, and being fully advised in the premises, and having made and entered Findings of Fact and Conclusions of Law;

Now, Therefore, It Is Considered, Adjudged and Decreed by the Court:

I.

That the contract entered into between Priest Rapids Irrigation District and Pacific Power & Light Company, dated January 10, 1940, was properly and lawfully executed by the directors of Priest Rapids [36] Irrigation District, was properly and

regularly submitted to the voters at the election held on June 29, 1940, and was by the voters lawfully approved and ratified, and that said contract is now a legal and valid contract binding upon the parties thereto.

II.

That the contract entered into between Priest Rapids Irrigation District and H. P. Pratt & Company, dated May 13th, 1940, copy of which is attached to the petition marked Petitioners' Exhibit "B", was regularly and lawfully executed by the parties thereto, is legal and valid in all particulars and is now a valid obligation binding upon the parties thereto.

III.

That the Director of the Department of Conservation & Development of the State of Washington and the directors of Priest Rapids Irrigation District had full right, power and authority to enter into the contract dated June 8, 1940, copy of which contract is attached to the petition herein marked Exhibit "C"; that said contract was regularly and lawfully executed and is now a legal and valid contract binding upon the parties thereto.

IV.

That the proceedings had by the Board of Directors of Priest Rapids Irrigation District in connection with the authorization and issuance of bonds in the amount of \$189,000.00, as described in the petition herein, including the resolution of the

Board requesting the consent of the Director to the refunding of bonds now held by the State of Washington and the calling of the special election held on the 29th day of June, 1940, the consent given by the Director thereto, the adoption of the resolution on the 8th day of June, 1940, calling the special election held on June 29, 1940, the giving of notice of said election, the holding of said election and the canvass of the returns thereof and declaration of the result, were regularly and lawfully had and conducted and that all acts performed by the Board in connection [37] therewith were regularly and lawfully performed, and that all acts required by law to be done and performed by the directors and the officers of Priest Rapids Irrigation District were done and performed as required and that all said proceedings were and are legal and valid.

V.

That the question of issuing district bonds in the amount of \$189,000.00 in the manner appearing in Proposition No. 1, in words and figures as follows:

“Proposition No. 1:

Shall Priest Rapids Irrigation District issue its negotiable bonds in the principal amount of \$189,000.00 for betterment, repair, extension and refinancing purposes, of which proposed issue, bonds in an amount not to exceed \$100,000.00, may be sold to provide funds for the repair, betterment, improvement and extension of District's Power and Irrigation systems, the remaining bonds in the amount of \$89,000.00 to be used for the purpose of refunding the Dis-

trict's outstanding bonds in a like amount now held by the state of Washington, or to be exchanged for said outstanding bonds or to be sold for the purpose of providing funds for the payment thereof?

Bonds Yes []

Bonds No []

was regularly and lawfully submitted and voted upon and approved and satisfied and that the bonds of the district in said amount, to-wit, \$189,000.00 may be legally and lawfully sold to the amount of \$100,000.00, and that the remaining bonds in the amount of \$89,000 may be lawfully issued by the Board of Directors and used for the purpose of refunding outstanding bonds now held by the State of Washington in said amount of \$89,000.00, or said bonds may be exchanged by the district for bonds now held by the State of Washington in a like amount, or that said remaining bonds may be lawfully sold by the district for the purpose of providing funds for the payment of the bonds now held by the State of Washington, and that the Director of the Department of Conservation & Development has the right, power and authority to accept said remaining bonds in the amount of \$89,000.00 as refunding the bonds now held by the State of Washington or in exchange for said bonds, [38] notwithstanding the fact that as a result thereof the State of Washington will be holding bonds of the district in the amount of \$89,000.00 as a part of a larger issue than the issue now outstanding and held by the State of Washington.

VI.

That notwithstanding that the reference to the contract with Pacific Power & Light Company dated January 10, 1940, was erroneous in that it referred to said contract as dated January 1, 1940, in the resolution calling said special election and in the proceedings in connection therewith and in the ballot, said contract was lawfully and legally ratified and approved by the voters at said special election.

VII.

That the pledging of the revenues to be derived from the sale of surplus electrical energy by the district to the payment of any and all bonds issued pursuant to said special election was regularly and properly submitted to the voters at the special election held on the 29th day of June, 1940, and that said pledge of revenues was properly and lawfully ratified and approved by the voters at said special election, and that said revenues were and are by virtue of said election and the contracts entered into between Priest Rapids Irrigation District and H. P. Pratt & Company, dated May 13, 1940, and the contract entered into between the irrigation district and J. B. Fink, Director of the Department of Conservation & Development, dated June 8, 1940, legally and validly pledged to the payment of any and all bonds issued pursuant to the aforesaid election and that said pledging of revenues is valid and binding upon Priest Rapids Irrigation District.

VIII.

That the question of cancelling bonds previously authorized but not issued, at an election on the 22nd day of October, 1938, and bonds authorized but not issued at an election held July 17, 1939, was regularly and lawfully submitted to the voters at said special election and that said bonds previously authorized but not issued were, as a result of said election, lawfully and validly cancelled, and that authority to issue bonds pursuant to said elections no longer exists. [39]

IX.

That if pursuant to the aforesaid election Priest Rapids Irrigation District shall exchange a portion of the bonds authorized for bonds now held by the State of Washington, the directors may lawfully include in the bonds of said issue authorized to be exchanged for outstanding bonds a statement on the face thereof showing the amount of such issue so exchanged, and may include therein a certificate of the treasurer of the district as to the amount of bonds exchanged, and that the outstanding bonds have been surrendered and cancelled, notwithstanding the fact that such statement and certificate are not included in the form of bond set forth in the resolution authorizing the election, and that bonds including such statement and certificate, in the event of an exchange being made, will be valid and binding obligations of Priest Rapids Irrigation District.

X.

That the Director of the Department of Conservation & Development, having in good faith exercised his discretion with respect to the acceptance of bonds of a larger issue than the issue now outstanding and held by the State in exchange for said bonds so held by the State, or by way of refunding said bonds, his act in agreeing to so accept said bonds of a larger issue is legal and valid.

XI.

That Priest Rapids Irrigation District has power to refund its bonds now outstanding and held by the State of Wahsington, and, with the consent of the Director, had the right, power and authority to call and hold said special election for the purpose of authorizing and refunding of its outstanding bonds and that the Director of the Department of Conservation & Development has the right, power and authority to permit the refunding of the bonds now held by the State of Washington by accepting a portion of said bonds to the amount of \$89,000.00 out of the total issue of \$189,000.00, notwithstanding the fact that said bonds now held by the State of Washington, which it is proposed to refund, were issued subsequent to the enactment of Chapter 121, Laws of 1929.

XII.

That notwithstanding the requirement in Section 2, Chapter 43, Laws of 1933, that "the proceeds of all bonds sold for cash must be paid by the purchaser

to the County Treasurer of the County in which the office of the board is located, and credited to the Bond Fund", the proceeds of the sale of any part of the issue of \$189,000.00 authorized by the election held on the 29th day of June, 1940, when received by the County Treasurer and credited to the bond fund of Priest Rapids Irrigation District will be available for the purpose for which said bonds are issued and sold and it will not be necessary that any part of said proceeds be held until refunding bonds accepted by the State of Washington, or bonds accepted by the State of Washington in exchange for bonds now held by the State have been paid.

It is further considered, adjudged and decreed by the Court that the notice of filing of the petition herein, including notice of this hearing has been duly given and published for the time and in the manner provided by law and by the order of the Court fixing a time and place for hearing; that all land owners in the district and all parties owning any interest in lands in the district have a common and general interest in the questions presented by the petition herein, are numerous and it is impracticable to bring them all before the Court, and the defendant R. J. Roberts, appearing generally is fairly representative of all other landowners and interested parties, and that the Court now has jurisdiction of the subject matter and of all parties appearing personally and by representation.

It is further considered, adjudged and decreed that the bonds authorized at said special election held on the 29th day of June, 1940, or any thereof,

when issued and sold or delivered to the State of Washington for the purpose of refunding the bonds now held by the State of Washington or exchanged for said bonds now held by the State of Washington, will be legal, valid and general obligations of Priest Rapids Irrigation District and [41] the lawful indebtedness thereof, payable out of and from revenue derived from annual assessments upon all of the real property within the irrigation district, levied and collected in the manner provided by the laws of the State of Washington, and that all the real property in the district shall be and remain liable to be assessed for such payments until fully paid; and the form of the bond set forth in the resolution is approved and confirmed, provided, however, that this approval of the form of the bond as set out in said proceedings shall not preclude the directors from modifying said form within the limitations imposed thereon by law.

It is further considered, adjudged and decreed that Priest Rapids Irrigation District has full power and authority to proceed with the sale of bonds as and for the purposes stated in the resolution calling the election and with the retirement of the bonds held by the State in any one of the three alternative methods provided in said resolution.

It is further considered, adjudged and decreed that the Court has full jurisdiction and power to examine and determine the powers of the Director of the Department of Conservation & Development, his right and power to enter into the contract with

Priest Rapids Irrigation District dated June 8, 1940, his right and power to accept district bonds of a larger issue in refunding the bonds now held by the State or in exchange for bonds now held by the State, and that the Court has jurisdiction and power to examine and adjudicate the legality and validity of said proposed bond issue in every particular and the legality and validity of the contracts between the district and the Pacific Power & Light Company, the district and H. P. Pratt & Company, and the district and J. B. Fink, Director of the Department of Conservation & Development, as well as and including the legality and validity of all proceedings and acts on the part of the board of directors and officers of the Priest Rapids Irrigation District and others that might in any manner or degree affect the legality and validity of said acts and proceedings and of the contracts and bonds and all other matters described in the petition filed herein. [42]

It is further considered, adjudged and decreed by the Court that the petition filed by the petitioners herein sets forth and alleges all the facts necessary to authorize and empower the Court to examine the proceedings referred to in said petition, to enter final judgment thereon and to fully and completely adjudicate all matters and all issues which this decree purports to adjudicate as against all parties appearing herein both personally and by representation.

It is further considered, adjudged and decreed by the Court that the directors of Priest Rapids

Irrigation District have power and authority to cause to be created and established in the Bond Redemption Fund an account to be designated "Surplus Balance", in which there shall be carried the revenues derived from the sale of surplus power, to be controlled as and in the manner set forth in the contracts between the irrigation district and J. B. Fink, Director, and H. P. Pratt & Company, and in the form of bond appearing in the resolution calling the election, and that the directors have power and authority to control and direct the application and use of revenues deposited in said "Surplus Balance" account, in accordance with the aforesaid contracts and bonds.

It is further considered, adjudged and decreed by the Court that the special election held on the 29th day of June, 1940, authorizing the issuance of bonds in the amount of \$189,000 was duly and regularly called and held; that all acts required by law to be done and performed by the Board of Directors in connection with the authorization of the issuance of said bonds, both before and subsequent to the holding of said election, and in connection with the holding of said election, have been done and performed in accordance with law; that all notices have been given in the manner and form and for the time required by law and that each and every act so performed is valid and binding upon the district and upon the real property therein, and each and all of said acts and things done and performed, and all proceedings of the board of directors in connection therewith, and all contracts described in the petition herein, and the form of bond

proposed to be issued, are hereby fully ratified, approved and confirmed and the legality and validity thereof are hereby established, and said contracts and the form of bond are hereby [43] adjudged to be legal and valid, and any and all bonds authorized at the special election held on June 29, 1940, that may be hereafter executed and issued pursuant to law, and the foregoing proceedings will be and constitute legal obligations of Priest Rapids Irrigation District, payable out of assessments levied therefor in the manner provided by law and payable out of the revenues derived from the sale of electrical energy.

By the Court this 15th day of August, 1940.

MATT L. DRISCOLL,

Judge.

Approved as to form:

O'BRIEN & SALVINI,

Attorneys for R. J. Roberts.

Filed for Record Aug. 15, 1940 and recorded in Vol. 20 of Sup. Court. Jr. pages 140, Etta J. Hillman, Clerk, Benton County, Office of County Clerk and Clerk of Superior Court.

In the Superior Court of the State of Washington
For Benton County

No. 6973

In the Matter of the Petition of B. Salvini, Wm.
S. Weber and R. S. Reiersen, Directors of
Priest Rapids Irrigation District, Praying that

the Proceedings for the Issuance and Sale of Bonds of said District and the Use of a Portion of said Bonds for Refunding Purposes, or the Exchange of a Portion of said Bonds for Outstanding Bonds, or the Sale of a Portion of said Bonds for the Payment of Outstanding Bonds authorized by a Special Election held on June 29, 1940, and other Proceedings, be examined, approved and confirmed by the above entitled Court.

R. J. ROBERTS,
Answering Defendant.

CERTIFICATE
(Authenticated Copy)

I, Etta J. Hillman, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Decree, filed for record August 15, 1940, in the above entitled action, as the same now appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 22nd day of May, 1943.

[Seal]

ETTA J. HILLMAN,
Clerk.

State of Washington,
County of Benton—ss.

I, Matt L. Driscoll, Judge of the Superior Court of the State of Washington, for Benton County, the same being a court of record, and having a clerk and seal, do hereby certify that Etta J. Hillman who has signed the foregoing instrument is the duly elected, qualified and acting Clerk of said Superior Court, that said Etta J. Hillman as such clerk is the sole custodian and keeper of the books, records, papers and seal of said Court.

That her signature to the annexed certificate is genuine, and that such certificate is in due form of law and by and proper officer.

Witness my hand and seal of said Superior Court at Prosser, Washington, this 22nd day of May, 1943.

MATT L. DRISCOLL,
Judge.

State of Washington,
County of Benton—ss.

I, Etta J. Hillman, County Clerk and ex-officio Clerk of the Superior Court of the State of Washington, for the County of Benton do hereby certify that Matt L. Driscoll, whose name subscribed to the above certificate is Matt L. Driscoll, judge of the Superior Court of the State of Washington for Benton County, and that the signature of said certificate is the genuine signature of Matt L. Driscoll, Superior Judge aforesaid.

In witness whereof, I have hereunto set my hand and seal of said Superior Court this 22nd day of May, 1943.

[Seal] ETTA J. HILLMAN,
County Clerk and ex-officio Clerk of Superior
Court of the State of Washington for Benton
County.

EXHIBIT "B"

Certificate

I, Ed Davis, the duly qualified, appointed and acting director of the Department of Conservation and Development of the State of Washington, do do hereby certify and affirm that the hereunto attached photostatic copy of Bond No. 52 in the amount of \$1,000.00, issued by Priest Rapids Irrigation District, is a true and correct photostatic copy of the original of such bond as the same exists and now is contained among the records and files in the office of the Department of Conservation and Development of the State of Washington.

Witness my hand and seal this 28th day of May, 1943.

ED DAVIS,
Director, Department of Con-
servation and Development
of the State of Washington.

State of Washington,
County of Thurston—ss.

This is to certify that on this 28th day of May, 1943, before me the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally came Ed Davis, to me known to be the individual and the director of the Department of Conservation and Development of the State of Washington, described in and who executed the within Certificate, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal, the day and year in this certificate first above written.

[Seal] MARIE STROCK,
Notary Public in and for the State of Washington, residing at Olympia, Washington.

United States of America
State of Washington

Priest Rapids Irrigation District, White Bluffs,
Benton County, Washington. 2½ Per Cent
General Obligation and Power Revenue Bond—
First Issue, Series F. Due January 1, 1947.
No. 52. \$1000.

Priest Rapids Irrigation District, which hereby declares itself to be an irrigation district duly created, organized and existing under the Act of the Legislature of the State of Washington entitled

“an act providing for the organization and government of Irrigation Districts and the sale of bonds, arising therefrom and declaring an emergency,” approved March 20, 1890, and the laws of said State amendatory thereof, and supplemental thereto, hereby acknowledges itself indebted to and for value received promises to pay to the bearer hereof, the sum of One Thousand Dollars lawful money of the United States of America, on the first day of January 1947, together with interest thereon at the rate of two and one-half percent per annum, payable semi-annually on the first day of January and July of each year according to the tenor of the interest coupons as they severally become due, at the office of the County Treasurer of Benton County, in the city of Prosser, State of Washington.

This bond is issued by and under the authority of and pursuant to and in full compliance with the above mentioned Act of the Legislature of the State of Washington and the acts of said legislature amendatory thereof and supplemental thereto, and under and pursuant to lawful votes of the electors of said Irrigation District cast at a special election held in said District on the 29th day of June, 1940, at which election a majority of the qualified electors of said district voted “Bonds, yes,” and the result of said election was duly so declared and entered of record. This bond is one of a total issue of one hundred eighty-nine thousand Dollars (\$189,000.00) issued by said District pursuant to said authority in eighteen series and numbered respectively according to the endorsements on the back thereof.

It is hereby certified, recited and warranted, that all acts, conditions and things required to be done exist and be performed precedent to and in the issuance of this bond have been done and performed and do exist in regular and due form and manner as required by law, and said bonds are declared to be the bonds of said District, a lawful indebtedness thereof, collectible by levy and assessment upon the real property in said District within the boundaries thereof as established by the County Commissioners of Benton County, Washington, by order duly entered of record, and to be payable out of the revenue derived from annual assessments and taxation upon said property levied and collected in the manner provided by the laws of the State of Washington, and for the further security of the payment thereof the following provisions has been made:

All income derived from the sale, delivery and distribution of electrical energy by Priest Rapids Irrigation District, has, by a favorable vote of the electors of the said District, at an election therein called, held and canvassed for that purpose, in the same manner as that provided by law for District Bond elections, been pledged in addition to income from District assessments to the payment of this issue of \$189,000.00 par value of bonds of said District, so long as any of said bonds remain outstanding. The Board of Directors of said District have deemed it advisable and have further provided that said income shall be deposited each month with

the County Treasurer of Benton County, State of Washington, and shall be apportioned in order of priority as follows:

First—The sum of \$500.00 per month in 1940 beginning with the month of September, and the sum of \$1250.00 per month beginning with the month of January, 1941, and continuing during the life of this issue of bonds, shall be apportioned to and sequestered in the Bond Redemption Fund, provided that it shall not be necessary for the Treasurer to so apportion and sequester said income so long as cash from any source shall be available in said Bond Redemption Fund (in excess of the “Surplus Balance” described below), for the full requirements of the next maturing interest and principal, including such requirements for the January 1st next succeeding, and provided further that if the gross income from the sale of electrical energy is insufficient in any month to make the apportionment and [47] sequestration above specified, then the amount of any deficiency shall be added to the amount required in the next month.

Second—An amount not in excess of \$500.00 per month shall be apportioned to such fund as shall be determined by the Directors to be expended for any lawful purpose of the district.

Third—One-half of any and all of said income in excess of requirements created by paragraphs designated “First” and “Second” above shall be apportioned to and sequestered in the Bond Re-

demption Fund as a "Surplus Balance" in excess of next maturing interest and principal up to and including the January 1st next succeeding until such "Surplus Balance" in said Bond Redemption Fund shall amount to \$15,000.00: provided that this Surplus Balance may in the future be reduced by District to not less than ten per cent of the authorized par value of the bonds of this issue remaining unpaid, when, as and if ten per cent thereof shall be less than \$15,000.00.

Fourth—The remainder of said income shall be credited by the Treasurer to any fund deemed advisable by the Directors, to be expended for any lawful purpose of the district.

Bonds of this issue numbered 52, 62, 73, 84, 95 and 106 and Bonds 107 to 189, both numbers inclusive, shall be callable at par plus accrued interest, in inverse numerical order, highest numbers first, and may be paid at the option of the district on any interest maturity date. All other bonds of this issue, except bonds numbered 1 to 42, both numbers inclusive, which are non-callable before maturity, shall be callable at par plus accrued interest in inverse numerical order, highest numbers first, and may be paid at the option of the district on January 1, 1946, and on any interest maturity date thereafter.

The lithographed and printed signature of the President and Secretary of the District upon the

coupons attached to this bond are hereby adopted as the signature of said officers and of said District.

Bonds in the amount of \$89,000.00 of this issue are being exchanged for bonds in a like amount heretofore outstanding and owned by the State of Washington.

In Witness Whereof, Priest Rapids Irrigation District has caused this bond to be executed in the name of the District, and signed by the President and Secretary, and its corporate seal, being also the seal of the Board of Directors of said District, to be hereunto affixed, and the coupons hereto attached to be signed by fac-simile signatures of the President and Secretary of the office of the Board of Directors of said District, at White Bluffs, Benton County, Washington, this first day of July 1940.

PRIEST RAPIDS IRRIGATION,
DISTRICT,

By B. SALVINI,
President.

Attest: ETHEL M. REMLINGER,
Secretary.

EXHIBIT C

United States of America, State of Washington,
Department of State

Certificate No. 8119

To All to Whom These Presents Shall Come

I, Belle Reeves, Secretary of State of the State of Washington and custodian of the Seal of said State, do hereby certify that the records of this office show that on May 1, 1941, Arthur B. Langlie, Governor of the State of Washington, appointed Ed Davis as Director of the Department of Conservation and Development; and I further certify that Ed Davis is now and has been since May 1, 1941 the duly appointed, qualified and acting Director of the Department of Conservation and Development for the State of Washington.

In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Washington. Done at the Capitol, at Olympia, this 27th day of May, A. D., 1943.

[Seal] BELLE REEVES,
Secretary of State.

[Endorsed]: Filed May 29, 1943.

In the District Court of the United States for the
Eastern District of Washington, Southern
Division

No. 128

UNITED STATES OF AMERICA

Petitioner.

vs.

CLEMENTS P. ALBERTS,

Petitioner.

ORDER ALLOWING STATE OF
WASHINGTON TO INTERVENE

This matter having come regularly on for hearing this day before the undersigned Judge of the above entitled court upon motion of the State of Washington for entry of an order herein authorizing said state to intervene in this action above entitled and join with Priest Rapids Irrigation District in its motion to establish sequence of trial, said motion having been supported by affidavits, which affidavits the court has read and considered, petitioner United States of America having been represented in open court at the time of such hearing by Edward J. Crowley and Bernard H. Ramsey, its attorneys, the state of Washington having been so represented by Jerome K. Kuykendall and Harold A. Pebbles, assistant attorneys general of and for said state,

Priest Rapids Irrigation District having been so represented by Moulton and Powell, its attorneys, and Charles Powell, of counsel, the court having listened to argument of such counsel and being satisfied in the premises, it is now therefore

Ordered and adjudged that the state of Washington be and it is hereby allowed to intervene in this action and join in the motion of Priest Rapids Irrigation District establishing sequence of trial.

Done in open court and dated this 29th day of May, 1943.

Presented by:

L. B. SCHWELLENBACH,

Judge

United States District Court

HAROLD A. PEEBLES,

Attorney for State of

Washington.

[Endorsed]: Filed May 29, 1943. [50]

In the District Court of the United States for the
Eastern District of Washington, Southern
Division

No. 128-43

UNITED STATES OF AMERICA,
Petitioner.

vs.

CLEMENTS P. ALBERTS, et al.,
Defendants.

AMENDED PETITION FOR CONDEMNATION

as to Tracts: D-250, E-286, E-297, E-325, F-365,
G-494, P-1291, P-1331, P-1336, R-1471, R1549,
S-1611, S-1632, S-1647, S-1658.

Comes now the petitioner, the United States of America, by its undersigned attorneys, acting under and by direction of the Attorney General of the United States, and respectfully alleges as follows:

I.

That wherein so indicated the defendants named as husband and wife or wife and husband are and at all times material hereto have been such husband and wife or wife and husband; where defendants are herein named by fictitious names the true names of such defendants are unknown; the several corporations named as defendants herein are all duly organized and existing corporate entities except as otherwise indicated in the designation following the name of each corporation.

II.

The Secretary of War of the United States, for military purposes, has undertaken the acquisition of the certain property hereinafter described, pursuant to and in accordance with the provisions contained in the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918, (40 Stat. 518; 50 U.S.C. sec. 171) and March 27, 1942 (Public Law 507—77th Congress), which acts authorize the acquisition of land for military purposes, and the Act of Congress approved July 2, 1942 (Public Law 649—77th Congress), which act appropriated funds for such purposes, and the Act of Congress approved February 26, 1931 (40 U.S.C. 258a) and acts supplementary thereto and amendatory thereof.

III.

That the acquisition of said property is necessary adequately to provide for the establishment of a military reservation and for other military uses incident thereto. The property herein described has been selected by the Secretary of War for acquisition by the United States for use in connection with the establishment of the Hanford Engineer Works and for such other uses as may be authorized by Congress or by Executive order and the petitioner in good faith intends to use said property therefor.

IV.

That certain of the tracts sought to be acquired in this proceeding and with respect to which the amended petition is filed are situate in the above entitled district and division and are described as follows: [53]

The full fee simple title thereto, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, and for existing irrigation ditches, canals, and laterals owned by the Priest Rapids Irrigation District in and to the following described lands, to wit:

Tract No. D-250

Lots sixteen (16) and seventeen (17), Replat of Block sixty-nine (69), Hanford, according to plat thereof recorded in volume 2 of plats, page 32, records of Benton County, Washington, containing .18 acres, more or less.

Tract No. E-286

The North half of the Southeast quarter of the Northeast quarter of the Southeast quarter of Section six (6), Township twelve (12) North, Range twenty-seven (27) East, W. M., containing 5.0 acres, more or less, in Benton County, Washington.

Tract No. E-297

The South half of the Northwest quarter; and the Northwest quarter of the Southwest quarter; all in Section two (2), Township twelve (12) North,

Range twenty-seven (27) East, W. M., containing 120.0 acres, more or less, in Benton County, Washington.

Tract No. E-325

The Southwest quarter of the Southeast quarter of the Southwest quarter of Section nine (9), Township (12) North, Range twenty-seven (27) East, W. M., containing 10.0 acres, more or less, in Benton County, Washington.

Tract No. F-365

The East half of the Northeast quarter of the Northeast quarter of Section seven (7), Township twelve (12) North, Range twenty-six (26) East, W. M., containing 20.0 acres, more or less, in Benton County, Washington.

Tract No. G-494

The Northeast quarter of the Southwest quarter of Section nine (9), Township thirteen (13) North, Range twenty-five (25) East, W. M., containing 40.0 acres, more or less, in Benton County, Washington.

Tract No. P-1291

Tract sixty-nine (69) and seventy-two (72), Columbia-White Bluffs Irrigated Orchards recorded in Volume 2 at Page 44, records of Benton County; also described as the West half of the Southeast quarter of the Northeast quarter, Section twenty-three (23), Township fourteen (14) North, Range twenty-six (26) East, W. M., containing 19.20 acres, more or less, in Benton County, Washington. [54]

Tract No. P-1331

The Northeast quarter of the Northeast quarter of the Southwest quarter of Section twenty-five (25), Township fourteen (14) North, Range twenty-six (26) East, W. M., containing 10.0 acres, more or less, in Benton County, Washington.

Tract No. P-1336

The Southeast quarter of the Southwest quarter of the Southeast quarter of Section twenty-five (25), Township fourteen (14) North, Range twenty-six (26) East, W. M., containing 10.0 acres, more or less, in Benton County, Washington.

Tract No. R-1471

Lots five (5) to nine (9), inclusive, Block thirty-one (31), Bradshaw's Addition to White Bluffs Investment Co.'s Town of White Bluffs, according to plat thereof recorded in volume 2 of plats, page 90, records of Benton County, Washington, containing 0.85 acres, more or less.

Tract No. R-1549

Lot twelve (12) and the Southeasterly 45 feet of lots thirteen (13) and fourteen (14) and all of lot fifteen (15), Block twenty-one (21), White Bluffs Investment Co.'s Town of White Bluffs, according to recorded plat thereof, in volume 2 at page 70, records of Benton County, Washington, containing .36 acres, more or less.

Tract No. S-1611

The Southwest quarter of Government lot four (4), Section six (6), Township thirteen (13) North, Range twenty-seven (27) East, W. M., containing 10.0 acres, more or less, in Benton County, Washington.

Tract No. S-1632

Government lot two (2) in Section 10 (10), Township thirteen (13) North, Range twenty-seven (27) East, W. M., containing 28.70 acres, more or less, in Benton County, Washington.

Tract No. S-1647

Tract three (3) and four (4), Plat of Hanford Irrigation and Power Co.'s Irrigated Lands in Section seven (7), Township thirteen (13) North, Range twenty-seven (27) East, W. M., according to plat recorded in volume 2 of plats, page 22 A in Auditor's office of Benton County, Washington, containing 20.0 acres, more or less.

Tract No. S-1658

East half of the West half of the Southeast quarter of the Southeast quarter of Section seventeen (17), Township thirteen (13) North, Range twenty-seven (27) East, W. M., containing 10.0 acres, more or less, in Benton County, Washington. [55]

For the purpose of setting forth a particular description of the property selected for acquisition and the names of each and every owner, encum-

brancer, tenant, or other person or party interested in the same or any part thereof, diligent search has been made of the public records of the State and County wherein said lands are located, said persons with respect to said tracts are as hereinafter set forth, to wit:

Tract No. D-250

E. Krentz, a bachelor

May Condon and John Doe Condon,
wife and husband

A. W. Robinson and Jane Doe Robinson,
husband and wife

Tract No. E-286

A. F. Brown, Trustee

D. L. Taylor and Jane Doe Taylor,
husband and wife

K. C. Gifford and Clara Gifford,
husband and wife

Elsie Lee Walters, widow

The Unknown Heirs of W. S. Walters, deceased
Carl Moritz

Hazel Clement

Theodore A. Formhals

Clyde Formhals

Nelora Mabel Burke

State of Washington

Tract No. E-297

Carroll C. Burnett and Ivy Bell Burnett,
husband and wife

Benton County, Washington

Tract No. E-325

C. V. Trevitt and Jane Doe Trevitt,
his wife on April 27, 1920.

Benton County, Washington

Northern Pacific Railway Company,
a corporation

Tract No. F-365

William Olson

The Unknown Heirs of Bertha Olson, deceased
Northern Pacific Railway Company,
a corporation

Benton County, Washington

State of Washington

Tract No. G-494

May H. Dean, individually and as administra-
trix of the estate of Highland Z. Dean, de-
ceased

The Unknown Heirs of Highland Z. Dean,
deceased

Riverland Irrigation District, a corporation

Benton County, Washington

State of Washington [56]

Tract No. P-1291

B. F. Arnold and Dollie Arnold,
husband and wife

Albert Moede and Ruby L. Meode,
husband and wife

Pacific Power and Light Company,
a corporation

Northern Pacific Railway Company,
a corporation

Benton County, Washington

State of Washington

Tract No. P-1331

Mary Nelson and John Doe Nelson,
her husband on April 5, 1910
Priest Rapids Irrigation District, a corporation
Northern Pacific Railway Company,
a corporation
State of Washington

Tract No. P-1336

C. I. Wright and Jane Doe Wright,
husband and wife
Priest Rapids Irrigation District, a corporation
John Doe Gruenhagen, husband of Anna Lenz
Gruenhagen on January 8, 1916
Northern Pacific Railway Company,
a corporation
Benton County, Washington
State of Washington

Tract No. R-1471

L. E. Hamblet and Jane Doe Hamblet, his wife
on August 8, 1928
Northern Pacific Railway Company,
a corporation

Tract No. R-1549

Harry Keller
The Unknown Heirs of Cora J. Keller, deceased
James Shepherd and Jane Doe Shepherd,
husband and wife
L. C. Foisy and Jane Doe Foisy,
husband and wife
Northern Pacific Railway Company,
a corporation
State of Washington

Tract No. S-1611

Frank L. Hawley and Jane Doe Hawley,
his wife on April 30, 1912
Priest Rapids Irrigation District, a corporation
State of Washington

Tract No. S-1632

Martin Paroz and Jane Doe Paroz,
husband and wife
Benton County, Washington

Tract No. S-1647

John Burch and Jane Doe Burch,
husband and wife
Priest Rapids Irrigation District, a corporation
Northern Pacific Railway Company,
a corporation
State of Washington [57]

Tract No. S-1658

L. Boutin and Jane Doe Boutin,
his wife on December 21, 1921
Northern Pacific Railway Company,
a corporation

In addition thereto, the petitioner joins as parties hereto the unknown heirs of the above named persons if deceased, and all other persons, parties, firms or corporations unknown having or claiming to have any right, title, estate, lien or interest in or to the land above described or any part thereto.

Wherefore, your petitioner prays:

1. That the purpose of this 'condemnation' be adjudicated to be a public use.

2. That a jury be empaneled to fix and determine a just and proper award and compensation for the property herein prescribed, or in case a jury be waived, then that the compensation to be paid as aforesaid be ascertained and determined by the court or a judge thereof, and that the parties entitled to receive such compensation be determined thereby.

3. That the property hereinabove described be decreed to be the property of the United States.

4. That the court grant such other relief as shall seem proper in the premises.

BERNARD H. RAMSEY,
Special Assistant to
Attorney General

EDWARD J. CROWLEY,
Special Attorney,
Dept. of Justice

JAMES LEAVY,
Special Attorney,
Dept. of Justice

HOWARD T. TUSTIN,
Special Attorney,
Dept. of Justice

EDWARD M. CONNELLY,
United States Attorney
Attorneys for Petitioner

[Endorsed]: Filed Aug. 26, 1943.

AUTHORIZING AND DIRECTING DECLARATION OF TAKING NO. 99

May 4, 1944

The Honorable

The Attorney General,
Washington, D. C.

Dear Mr. Attorney General:

Reference is made to the condemnation proceeding entitled United States of America vs. Clements P. Alberts, et al., No. 128, in the United States District Court for the Eastern District of Washington, for the acquisition of land in connection with the Hanford Engineer Works Project.

Pursuant to the provisions of the Act of Congress approved February 26, 1931, and the Acts of Congress recited in the petition filed in the above entitled proceeding, it is requested that you cause the inclosed declaration of taking No. 99 to be filed in said proceeding. The declaration of taking covers all the operating properties and facilities of the Priest Rapids Irrigation District as described more fully therein, and shows \$170,500.00 as the estimate compensation therefor. This compensation represents the outstanding indebtedness of the District. A detailed explanation of the necessity and advisability of filing the declaration of taking is contained in the letter to your Department dated March 25, 1944, from Leland L. Yost, Special Assistant to the Attorney General. The War Department has engaged certified public accountants of Yakima,

Washington, to audit the books of the Priest Rapids Irrigation District, which audit has not as yet been entirely completed. The matter has also been fully discussed with Mr. Bernard H. Ramsey, Special Assistant to the Attorney General, and from the best possible information available, it is recommended that \$170,500.00 be deposited with the filing of this declaration of taking. It is believed that this amount will be sufficient to pay all bonds and warrants of the District after deducting anticipated income from conditional sales contracts outstanding and cash which is now on hand in the bond redemption fund and in the funds of the District. The amount recommended for deposit also includes an estimate of interest on the bonds to approximately May 15, 1944. The check in the amount of \$170,500.00 payable to the order of the Clerk of the United States District Court for the Eastern District of Washington, is inclosed for deposit in the registry of the court.

This Department has been recently advised that unless the declaration of taking covering the Irrigation District's properties and facilities is filed before June 1, 1944, the court will entertain a motion to set aside all verdicts returned during this term of court and will permit in the future, the defendant in all cases to show the value of the District's properties and facilities. It is the recommendation of this Department that the declaration of Taking inclosed herewith, be filed immediately.

An appraisal report is not furnished on any of the lands and interests described in the declaration of

taking for the reason that under the acquisition policy established by this Department and approved by the Department of Justice, it is the position of the Government that upon the acquiring all of the land in the Priest Rapids Irrigation District, the Government becomes the owner of the Irrigation District subject only to the bonded indebtedness of the District itself and an appraisal is therefore unnecessary. Title evidence for Tract No. W-2004 described in the declaration of taking as Parcel PR-1, and Tract No. G-452 designated as Parcel PR-3, together with a master certificate of title for the Priest Rapids Irrigation District have been forwarded to Mr. Bernard H. Ramsey, Special Assistant to the Attorney General.

Four additional copies of said declaration of taking are inclosed.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

2 Incls: 1, Check; 2, D.T. (quint.)

Pursuant to T. 28, U. S. Code, Sec. 661, I certify this to be a true copy of the original record in this department.

J. EDWARD WILLIAMS,

Acting Head,

Lands Division, Department
of Justice. [59]

[Seal]

[Title of District Court and Cause]

EXCERPTS

Yakima, Washington, October 12, 1943.

The Court: Well, go ahead and make your offer of proof.

Mr. Wiehl: It is agreeable with counsel, is it not, that Mr. Powell make his offer of proof pertaining to all the tracts involved, that are in the Priest Rapids Irrigation District?

Mr. Ramsey: The Government will stipulate that the offer of proof will apply to each of the three tracts located within the Priest Rapids Irrigation District, that is, the Shaw tract, the Wright tract and the Parke tract.

G. B. HALL

(Recalled)

having been previously sworn, testified as follows:

Mr. Powell: Should I merely file this or read it into the record, your Honor?

The Court: Oh, I see no reason,—let the record show that you have read it in and Mr. Moburg can copy it. I see no reason why you should go to the trouble of reading it.

Mr. Powell: All right, your Honor.

The Court: You copy it in, Mr. Moburg.

“Offer of Proof

“Priest Rapids Irrigation District

“As to tracts P 1336 (Wright), Q 1425 (Shaw), P 1274 (Parke), defendants, owners of the above-numbered tracts all of which are located within the Priest Rapids Irrigation District, offer to prove the following facts concerning said District.

1.

“That there are within the boundaries of said District, 15534.03 acres of land and of that total 3196.42 acres were in private ownership at the time of the filing of the first declaration of taking against privately owned lands within the District.

2.

“That during the *money* of April, 1943, the petitioner took possession of the District's pumping plant and distribution system and has since maintained and operated same and that on October 1, 1943, the petitioner took possession of the power plant of the District and is now either engaged in operating the same for its own purposes or has leased the same to the Pacific Power and Light Company. That the petitioner receives the revenue from the operation of the plant, the exact terms of the agreement between the petitioner and the Pacific Power and Light Company being unknown to the defendants. That no declaration of taking has been filed against the power plant or other properties [62] of the District and the title thereto is still in the District

3.

“That prior to the commencement of this action, the District had acquired certain lands by the foreclosure of delinquent assessments, a portion of which have been sold on contract and that all of said lands, including the value of its contracts of sale, were \$17,100.00.

4.

“That on October 1, 1943, the financial condition of the Priest Rapids Irrigation District was as shown by the statement of the County Treasurer of Benton County, Washington, a true and correct copy of which statement is attached to the original of this offer and is marked “Defendant’s Identification——.”

5.

“That the property of the Irrigation District, exclusive of lands acquired on the foreclosure of the assessments, consists of the following:

(a) One (1) small and three (3) large pumps installed on the bank of the Columbia River, by means of which water is pumped through discharge pipes into a main canal.

(b) A canal and distribution laterals consisting [63] small canals and pipe lines, by means of which water is made available to defendant’s land.

(c) 15.6 miles of 60,000 volt transmission lines for the transmission of electric energy.

(d) A power plant consisting of a wing dam for the diversion of water from the Columbia River, a power canal by which water is conducted through turbines for the generation of power, a concrete building in which the generating equipment is housed, two generators and complete generating machinery and equipment.

(e) Transformers, switching gear and all other miscellaneous equipment necessary in the operation of the power plant and transmission of energy to the irrigation works of the District.

6.

“That the Priest Rapids Irrigation District is the successor in interest of the Hanford Irrigation and Power Company, which originally acquired the right to divert water at Priest Rapids, and the right to construct a wing dam therefor and that a true and correct copy of the original permit to construct such dam and divert water is herewith offered in evidence and marked “Defendant’s Identification” [64]

7.

“That there have been no sales whatsoever of Irrigation District instrumentalities as such or of power plants such as that owned and operated by the District, and, therefore, there are no sales of similar property which could be used to establish market value.

8.

“That during the irrigation season, from March 15th until October 15th in each year, energy ranging from 50 kilowatts to 1160 kilowatts is required for pumping water upon the lands irrigated by the District. That said power is transmitted from the power plant through the transmission line of the District to Coyote Rapids, a distance of 15.6 miles where the pumping station is located.

9.

“That all power generated in excess of the amount required for the pumping of irrigation water and the operation of the power plant is now sold to the Pacific Power & Light Company under contract at 1.75 mills per kilowatt hour, less 5% for line loss. That that contract extends until January 1, 1961. That in 1942 the sale of surplus power under said contract resulted in an operating revenue of \$14,258.07. That from January 1, 1943, to October 1, 1943, although only [65] one generator was in operation, the operating revenue received by the District under said contract was \$10,915.84.

10.

“That the operating revenue derived from the sale of surplus power is available to and is used by the District for a payment of interest on the bonded indebtedness and for the redemption of District bonds and toward the payment of the costs

and expenses of operating and maintaining the irrigation district facilities. That the properties of the District are valued as follows:

SUMMARY OF VALUATION BY FEATURES

Designation	Feature	Total Values
A	Power Canal.....	\$ 153,200
B	Generating Plant—Structures	149,900
C	Generating Plant—Equipment	121,500
D	Coyote Pumping Station—Structures.....	39,900
E	Coyote Pumping Station—Equipment	59,270
F	Transformers and Switches	30,700
G	Transmission Line.....	79,900
H	Main Irrigation Canal.....	74,000
I	Lateral System	9,700
J	Misc. Property	1,790
K	Future Development Expense	3,800
L	Water and Power Rights	307,025
Total.....		<hr/> \$1,030,685

11.

“That the District power plant has a maximum generating capacity of 2900 kilowatts and a safe generating capacity of 2700 kilowatts. That at and before the time for the filing of declaration of taking against lands in the Priest Rapids Irrigation District, it had \$16,346.61 available for further construction. That the district had planned, with the intention of immediately executing said plan, to increase the generating capacity of its power plant and to enlarge its irrigation distribution facilities. That thereby the District could increase the amount of electric energy generated at the power plant,

thereby realizing additional funds from the sale of surplus power and further, the area of irrigated lands within the District would be increased. That said plan further included the refinancing of the present indebtedness and the District had the assurance of private agencies that when materials are available \$600,000 would be loaned to said District for the purpose of refunding its present indebtedness and extending its facilities and increasing the capacity of its power plant. That one condition of the assurance [67] of the loan was that the power plant be increased to full generating capacity.

12.

“With an expenditure of approximately \$30,000, the generating capacity of the power plant can be increased to 22,847,832 kilowatt hours which would result in an increase in annual net revenue.

13.

“That the defendants further offer to prove that from experience of other power plants and from the experience of the District’s power plants by the expenditures of the additional sums, net operating revenue from said power plant may be increased as follows:

From operating records of Naches Drop Plant, 30 yrs. old, Powerdale Plant, 20 years old, and Prosser Plant, 11 years old, there was in 1941 and 1942

an average operation of 97.7% ; Maximum possible operation 8760 hours per year.....or..... 100.0%.

“In addition to the above time losses allowance must be made for general overhauls at 6 to 10 year intervals. These overhauls usually required 24 days or at 6 year intervals an average of 4 days per year which in percent is 1.1%.

“Deducting this overhaul time from the normal operating percentage, the anticipated annual average is 97.6%. [68]

“Maximum generation of the Priest Rapids plant has been 2900 kilowatts. This maximum safe capacity of the plant is 2700 kilowatts.

“Operating 96.6% of the maximum possible time at 2700 kilowatt capacity the plant would generate per year 22,847,832 kilowatt hours. Less 5% for transformation and transmission loss, 21,705,440 kilowatt hours.

“Under the terms of the sales contract, the company can limit the amount of energy they will receive to 2,400 kilowatts or in percentage of maximum safe capacity of the plant 88.9%.

“Using the contract limit and 95% operation instead of the 96.6% shown by actual operating records, the delivery per year to the company would be 19,973,000 kilowatt hours.

“Delivering this energy at 1.75 mills per kilowatt hour, less 5% for transmission and transformation losses, the annual return would be.....	\$ 33,205
Less operation and maintenance cost (Present \$6,700) Estimated	9,800
Net operating revenue.....	\$ 23,405
“The 1942 net operating revenue if all energy were sold (11,864,300 kilowatt hours at mills less 5%)..	\$ 19,724
Less estimated operation and maintenance costs	9,800
Net operating revenue.....	\$ 9,924
“Possible increase in net operating revenue (\$23,405 less \$9,924)	\$ 13,481
“Capitalizing this at 4% per annum the increased earnings represent a capital investment of.....	\$337,025
Less cost of canal enlargement and other improvements necessary to obtain maximum output	30,000
Intangible value is.....	\$307,025”

(End of offer of proof.)

Mr. Powell: We hereby offer to prove, if your Honor please, the matters contained in the written, in the written statement, which your Honor has, and all of them by the witness Hall, your Honor. And we feel that we will be able to establish the facts contained therein by this witness if he were permitted to testify to them. They pertain to the District and to the value of the properties of the District. We also in the offer, which will be in the record,—we further desire to offer two exhibits. One is a statement of financial condition of the District which shows the cash on hand, and the indebt-

edness, both warrant and bonds, and the other is a certified copy of the original permit to divert water and construct the wing dam at Priest Rapids.

The certified copy of that, however, is in the County Auditor's office and today is a holiday there and I was not able to get it this morning. I think counsel will agree I may offer it later.

Mr. Ramsey: The Government will stipulate that the offer shall be considered as made and that a certified copy may be marked as an exhibit and attached to the offer tomorrow or at some subsequent date during the progress of this trial.

The Court: Well, those two exhibits will be marked,——

Mr. Powell: In the offer I have referred to them as for Identification, your Honor.

(Discussion off the record.)

The Court: Yes, they will be marked for Identification, Parke-Wright and Shaw's Identifications 1, 2 and 3.

(Parke, Wright and Shaw's Identifications 1, 2 and 3 were marked for identification.)

The Court: Now, I think you ought to qualify Mr. Hall before you make your offer. [71]

Q. (By Mr. Powell): Mr. Hall, you live in Yakima? A. I do.

Q. How long have you lived in Yakima?

A. I have lived here for over 20 years.

Q. What is your business?

A. Engineer, Civil Engineer.

Q. Are you licensed by the State of Washington? A. Yes.

Q. Do you have other licenses?

A. Yes, sir, Idaho and Oregon.

Q. Your office is in the Larson Building here?

A. That is right.

Q. What work do you do?

A. For the past year and a half it has been principally War Department and Navy work and the water works and sewerage systems.

Q. You are engaged primarily in engineering on public utilities and water systems?

A. That is right.

Q. Have you been with the Reclamation Bureau?

A. Yes, I was with them for 5 years.

Q. And were you at one time employed by the Priest Rapids Irrigation District?

A. In 1938. [72]

Q. That is when your employment commenced?

A. Yes.

Q. And did you make studies and do engineering work for the District at that time?

A. Yes.

Q. And subsequently?

A. At intervals since.

Q. And when did you make a study of the facilities of the Priest Rapids Irrigation District?

A. Beginning in 1938 for a public works administration application,—for funds to rehabilitate the District.

Q. And did you make a complete examination of the facilities of the District this year?

A. Yes, I did.

Q. And you at that time arrived at certain cost figures and reproduction figures in order to place an evaluation upon the facilities of the District?

A. Yes.

Q. And you are prepared to testify concerning that valuation? A. I am.

Q. You are familiar with the offer of proof that we are prepared to make here? A. I am.

Q. And you are familiar with all the matters contained in [73] it and the facts stated in it?

A. Right.

Mr. Powell: We offer to prove the matters contained in the written order, your Honor, which we understand to be a part of the record.

The Court: Now is it stipulated that the properties involved, tracts P 1336, Q 1425 and P 1274 are in the Priest Rapids Irrigation District?

Mr. Ramsey: It is so stipulated by the Government.

The Court: And that the assessments due to the District have been paid to such a time that there is no forfeiture of any rights that the owners thereof would have in the event of the liquidation of the District under the State statute to their proportionate share in the value of the assets?

Mr. Ramsey: Provided that at the time of the liquidation of the District the present owners were still owners of lands within the District.

The Court: Well, I mean as of the date of taking, that they were such.

Mr. Ramsey: Yes, with the further reservation that the assets of the District would first be subject

to the payment of all outstanding indebtedness of the District before the land owners would be entitled to share [74] any cost of dissolution.

The Court: Well, that is under the State law,—that necessarily would follow. But you are raising no question about the fact that this land, or these owners were on the date of taking qualified to participate if such a participation resulted from the dissolution of the District?

Mr. Ramsey: I will so stipulate.

The Court: Go ahead and make your objection.

Mr. Ramsey: The offer of proof, and all of the offer of proof and the offer as to the exhibits are objected to as being wholly incompetent, irrelevant and immaterial for the reason that the value of the assets of the District and the lands are fully reflected in the appraisal of those lands as irrigated tracts.

For the further reason that there is no property interest in the assets of the District as to the lands or the owners of the lands until such time as the District has been dissolved under the provisions of the laws of the State of Washington, and that at the time of the taking there was no dissolution of the District and for the further reason that at the time of the taking any equitable right of the lands or the owners in the facilities of the District passed with the title itself and that the Government in taking the full fee [75] simple title to the property acquired any equitable interest which either the lands taken or the owners of the lands taken as of that date may have had.

The Court: The objection is sustained. The offer is refused and the offer of the exhibits, Parke, Wright and Shaw's Identifications numbers 1, 2 and 3 are refused.

Mr. Powell: Now if your Honor please,—

The Court: I would like to make a statement for the record.

As I indicated the other day with reference to a similar offer concerning the Richland district in which the District property was involved, I am convinced that in so far as this land is land which is dependent upon the district for its water and compensation is sought by the owner upon the basis of the value of the land as irrigated land or as potential irrigated land, and the jury is asked to take into consideration the fact that water is being furnished or can be furnished by the district, that there is no doubt in my mind, that the owner is not entitled in this proceeding to compensation to the extent of his pro rata share of the assets of the district after liquidation, this for the reason that such compensation would constitute double compensation. If the owners are asking for compensation on the [76] basis of irrigated land, the only time at which they would be entitled to participate in the assets of the district would be upon the liquidation of the district. If the district was liquidated, necessarily it would not be furnishing water and they can't take compensation as irrigated land and at the same time take it as non-irrigated land, non-irrigated because of the abandonment of the irrigation facilities by the district.

As to the Shaw tract, there is some testimony concerning the fact that there was a well on the property. I don't know whether the testimony will reveal whether or not it would be the contention of Mr. Shaw that the supply of water from the well is ample to irrigate the land without any dependence upon the district for water. I am informed that the testimony in the Parke case will be that they have a well which can supply ample water and they have no need for the water of the district.

It seems to me that a different problem is presented where the owner of the property is not depending upon the district for his water and is claiming the value of irrigated land on the basis of water privately supplied. There, there would not be such double compensation, and it is my personal opinion that in those instances the parties are entitled to recover not only [77] for the value of their land as irrigated land but also to recover for their pro rata share of the value of the assets of the district. However, in the meeting which was in the nature of a pre-trial conference, and which would have been considered a pre-trial conference had the Federal rules of procedure applied to condemnation proceedings, counsel on both sides represented to me that the cost of submitting complete testimony as to the value of the assets of the district would be a considerable amount for the Government on the one hand and the land owner on the other; that it would involve a protracted trial which would result in a long and expensive record to be taken to the Circuit Court of Appeals, and I am glad to co-

operate with Counsel on both sides and the parties on both sides in getting this record in such shape that the Court of Appeals can pass upon the question without putting the respective parties to the expense, first, of the preparation for a trial, second, in the trial itself, and third, for the taking to the Appellate Court of a long and expensive record. I am hopeful that in this case we have presented to us all of the various problems arising out of the state statute which gives to the owner of a land in a liquidated irrigation district the right to his pro rata share and that the Court of Appeals will view sympathetically [78] the proposition of taking them all up and giving us the answers to the various problems which are presented. I want the record in this case to show that there are a number of dozens of other cases involving the same problem and that this is not simply a matter of certifying something up to the Appellate Court because of the fact that we don't want to handle it here, but it seems to me to be the practical manner of handling it in order to avoid an exceedingly large amount of expense to everybody involved in all of these cases. Do you have something further?

* * *

I, Bruce Moburg, do hereby certify that at the time the case of United States of America, Petitioner, vs. Clements P. Alberts, et al., Defendants, No. 128 in the District Court of the United States, for the Eastern District, Southern Division, was tried in said Court, I was official court reporter for said Court, in said District and Division, and that

the foregoing pages, numbered from 1 to 20 inclusive, are a true and correct excerpt from transcript of proceedings of said case upon October 12, 1943, at Yakima, Washington, commencing on line 21, page 420 and ending at line 15, page 435, both inclusive, of said transcript.

BRUCE MOBURG

[Endorsed]: Filed July 19, 1947.

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

on April 26, 1944

Before the Hon. L. B. Schwellenbach, Judge, at Yakima, Washington, beginning at the hour of 10:00 o'clock a.m., April 24, 1944; B. H. Ramsey, Chester Thomas and Frank B. Reid, Special Attorneys for the Lands Division of the office of the Attorney General, appearing as attorneys for the plaintiff; Moulton & Powell (by Charles L. Powell) appearing as attorneys for defendants Chalcraft.

During the trial of said cause, and at the hour of 10:00 o'clock a.m., April 26, 1944, in the Court's chambers, in the absence of the jury, the following proceedings were had, to-wit:

Mr. Powell: If Your Honor please, we desire to make an offer of proof in connection with the present case, as follows: We desire to prove as a part of the defendants' cases, pertaining to each of the tracts, the value of the irrigation

district's works, water rights and properties, as well as the cash in bank and obligations, as reflecting a value in the land of each of the property owners involved in these cases.

We further feel that this offer is in order now, particularly in view of the fact that counsel in the action tried in October made the statement that the Department was filing a declaration of taking against [81] the Richland Irrigation District and the Priest Rapids Irrigation District, within, I believe, thirty days thereafter, and the declaration of taking has not been filed.

Mr. Ramsey: That is objected to on the ground that the water rights of the district are appurtenant to the lands being acquired by the Government in these proceedings; that the instrumentalities of the District are impressed with a trust in favor of the lands, and that the value of the water rights and the value of the instrumentalities is fully reflected in the values placed upon the lands by both the Government witnesses and the defendants' witnesses.

With reference to the filing of the declaration of taking upon the instrumentalities of the District, I do not remember that any specific time limit was given by me at the time in October that the statement was made to the Court that declarations of taking would be filed for the acquisition of the District's instrumentalities. If such a time limit was set it was merely an estimate upon my part, but I want to reiterate that

it is the purpose of the Government to file such declaration of taking; that as a matter of fact the declarations of taking covering the properties of the District were cleared through the Project Office of the Army Engineers more than sixty days ago, and are at this time in the hands of the War Department to be forwarded through the Department of Justice for filing, and the reason for the delay has to do with the acquisition of certain other privately owned [82] properties in the District; that I have been assured that every effort will be made to expedite the filing of these declarations of taking, and the deposit in court of a sufficient fund to care for the obligations of the District.

The Court: I will sustain the objection to the offer of proof, but in connection with this ruling I wish to say this: First, the ruling is not based upon any deficiency in the offer of proof. While the detailed offer has not been given, I am familiar with the position which the defendants take, and in one of the earlier trials in October a detailed statement of the testimony was made, and I am passing on this offer of proof upon the theory that if a detailed offer was made it would be the same as made at the previous trial.

The background of this situation is this. Shortly after the commencement of these actions, in May, 1943, as I remember it, the motion was made by Mr. Powell concerning this question of the right of the property owners to have adjudicated in these proceedings and in-

cluded in any judgment a prorata share that each property owner might be entitled to in the event of a dissolution of the Irrigation District.

The Government resisted that effort on the part of the property owners, asserting it intended to acquire all of the property within the District, as a result of which it would then become the owner of the facilities and instrumentalities of the District.

This presented an entirely new proposition of law. Neither counsel nor the Court were able to find any [83] authorities directly assisting in the effort to find the correct answer to the problem. At my suggestion it was agreed that in the first case that was to be tried the offer of proof would be made, and that I would deny the offer, and that not only the counsel directly involved in the case, but the Attorney General's office would attempt to expedite an appeal so we could have a decision on this question by the Circuit Court of Appeals prior to the trying of any more of the actions involving any of the other lands within the District.

This was agreed upon, but at the conclusion of the first trial in October that procedure was abandoned. The abandonment was in part due to the statement by counsel for the Government that the Government would proceed expeditiously with the filing of the declarations of taking on the properties of the Irrigation District.

As Mr. Ramsey has said, no definite time was fixed, but it certainly was agreed that the Gov-

ernment would proceed with expedition, and the period of expedition has long passed. It is now six months since that statement was made.

I freely absolve Mr. Ramsey and the Lands Division of any culpability in the matter. That, however, does not satisfactorily meet the situation.

The Court has no power to force the Attorney General's office or the War Department to file declarations of taking. However, I am denying this motion with the statement that if at the conclusion of this hearing, [84] in which the just compensation for some six tracts is being determined, if the property owners file a motion for a new trial, I will consider this offer of proof in reference to the motion for a new trial, and I am now giving notice to the Government that before any other cases are tried either the declaration of taking must be filed, or the next time any trials ensue I intend to permit the property owners to prove the value of their proportionate share in the Irrigation District, and it will be necessary for the Government by early June, which will be the date of the next trial, to be ready to present its testimony as to the value of the Irrigation District, and I intend from now on to permit the property owners to submit such testimony and submit that issue to the jury.

As I have said in previous cases, I appreciate the difficulties with which the War Department are confronted, but that does not justify this

delay. The original order for possession was granted on February 23, 1943. That is a little more than fourteen months ago.

The Government and the War Department have a greater responsibility to our citizens than would justify them pleading the necessities of the War in attempting to explain this fourteen-months delay in this portion of the proceedings.

While I can understand their desire to acquire title to all the property within the District before filing declarations of taking, as to the assets of the District, there is nothing so difficult about describing [85] the assets of the District as would enable them to use this length of time and excuse it.

(The trial of the causes was then resumed in open court before the jury.)

State of Washington
County of King—ss.

I, the undersigned, do hereby certify that as the court reporter I did attend and did report in shorthand all the evidence and proceedings had upon the trial of the cause first hereinbefore entitled, held at Yakima, Washington, beginning at the hour of 10:00 o'clock a.m., April 24, 1944.

I do further certify that the foregoing five pages, and lines from 1 to 4, inclusive, on this page, are a full, true and correct transcript of the proceedings had in said cause, in Court's chambers, as set forth on page one of this transcript.

Witness my hand at Seattle, Washington, this 23d day of June, 1947.

EAGAN RIDENOUR,
Court Reporter.

[Endorsed]: Filed July 19, 1947.

In the District Court of the United States for the
Eastern District of Washington, Southern Division

No. 128-99

UNITED STATES OF AMERICA

Petitioner,

vs.

CLEMENTS P. ALBERTS

PRIEST RAPIDS IRRIGATION DISTRICT,
et al.

Defendants. [87]

AMENDED PETITION FOR CONDEMNATION

As to Parcel PR-1, Tract No. W-2004, Parcel PR-2, Parcel PR-3, Tract No. G-452, Parcel PR-4, Parcel PR-5.

Comes now the petitioner, the United States of America, by its undersigned attorneys, acting under and by direction of the Attorney General of the United States, and respectively alleges as follows:

I.

That wherein so indicated the defendants named as husband and wife or wife and husband are and

at all times material hereto have been such husband and wife or wife and husband; where defendants are herein named by fictitious names, the true names of such defendants are unknown; the several corporations named as defendants herein are all duly organized and existing corporate entities except as otherwise indicated in the designation following the name of each corporation.

II.

The Secretary of War of the United States, for military purposes, has undertaken the acquisition of the certain property hereinafter described, pursuant to and in accordance with the provisions contained in the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518; 50 U.S.C. sec. 171) and March 27, 1942 (Public Law 507—77th Congress), which Acts authorize the acquisition of land for military purposes, and the Act of Congress approved July 2, 1942 (Public Law 649—77th Congress), which Act appropriated funds for such purposes, and the Act of Congress approved February 26, 1931, (40 U.S.C. 258a) and Acts supplementary thereto and amendatory thereof. [88]

III.

That the acquisition of said property is necessary adequately to provide for the establishment of a military reservation and for other military uses incident thereto. The property herein described has

been selected by the Secretary of War for acquisition by the United States for use in connection with the establishment of the Hanford Engineer Works and for such other uses as may be authorized by Congress or by Executive order and the petitioner in good faith intends to use said property therefor.

IV.

That certain of the tracts sought to be acquired in this proceeding and with respect to which the amended petition is filed are situate in the above entitled district and division and are described as follows:

- (1) The fee simple title to the lands described as Parcel PR1, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, and also subject to all easements and rights of whatever nature, owned by the Washington Irrigation and Development Company.
- (2) The existing rights and/or easements of the Priest Rapids Irrigation District to construct, operate, maintain and patrol an electric power transmission line and appurtenances in, over, upon and across the land described as Parcel PR-2.
- (3) The fee simple title to the lands described as Parcel PR-3, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines.

- (4) The fee simple absolute title to the property described as Parcel PR-4.
- (5) All right, title or interest of the Priest Rapids Irrigation District in and to the lands described as Parcel PR-5, said lands situate in Benton and Yakima Counties, Washington and more particularly described as follows: [89]

Parcel PR-1—Tract No. W-2004

Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is 986½ feet West of the quarter section corner on the North boundary of said section; thence East along said North boundary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W. M.

Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

Parcel D:

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

and also:

Together with all rights of the Priest Rapids Irrigation District, a Washington corporation, to construct and maintain wing dams for power canal for water plant in Columbia River at Priest Rapids, which is immediately adjacent to the lands above described, and also including the right to divert the water of the Columbia River at Priest Rapids for

the purpose of developing power upon the lands above described, and also all of those certain head-gates, headworks, wing dams, embankments, concrete power house, wing walls, gates and draft tubes located upon, appurtenant to or used in connection with the above described lands, together with all water rights appurtenant thereto or used in connection with the lands heretofore described. All in Yakima County, Washington.

Parcel PR-2

All presently existing easements and/or rights of the Priest Rapids Irrigation District, a Washington corporation, for the construction, operation, maintenance and patrol of an electric power transmission line running from its power house site located in Parcel PR-1, to its pumping station site located in Parcel PR-3, including all poles, wires and appurtenances. The approximate location of said transmission line is as follows:

That certain 66,000 volt transmission line known as "The Hanford-Priest Rapids Line," including poles, wires, insulators, cross arms, guys, props and hardware, and beginning at the power house located on the land described in Parcel PR-1 in Section 2, Township 13 North, Range 23 East, M. W.; and extending in a Southeasterly direction through Sections 2, 11 and 12 Township 13 North, Range 23 East, W.M., to the Southeast corner of Section 12, Township 13 North, Range 23 East, W.M.; and then in an Easterly direction along the North line of Sec-

tions 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 24 East, W. M.; then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 25 East, W. M.;

Also that certain branch line known as the "Coyote Stub Line," beginning at a point on the main 66,000 volt Hanford-Priest Rapids Line at the Northeast corner of Section 13, Township 13 North, Range 25 East, W. M., and extending in a Northerly direction along the East line of Sections 12 and 1, Township 13 North, Range 25 East, W. M.; and then across Section 6, Township 13 North, Range 26 East, W. M., to the Coyote Pumping Station formerly owned by the Hanford Irrigation & Power Company, and which is located upon land herein-after described in Parcel PR-3 as Tract No. G-452.

All in Yakima and Benton Counties, Washington.

Parcel PR-3—Tract No. G-452

Government Lot Four (4), Section six (6), Township thirteen (13) North, Range twenty-six (26) East, W. M., together with second class shore lands adjoining, in Benton County, Washington, containing 16.72 acres, more or less.

Parcel PR-4

All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation.

Parcel PR-5

All right, title or interest of the Priest Rapids Irrigation District, a Washington corporation, in and to the following described lands, including all canals, ditches, laterals, pipe lines, easements, rights of way and appurtenances owned by said Priest Rapids Irrigation District:

Beginning at the Southwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M.; thence East along South line of said Lot 4 to its Southeast corner; thence North along the East line of said Lot 4 to the Southerly right-of-way line of the Priest Rapids Irrigation District canal right-of-way; thence along said canal right-of-way line through Section 6 in said Township and Range; Sections 31, 32, 33, 34, 27, 26, 25, and 36 in Township 14 North, Range 26 East, W. M.; Section 1, Township 13 North, Range 26 East, W. M.; Sections 6, 7, 8, 17, 16, 21, 28, 27, 26, 35, and 36 in Township 13 North, Range 27 East, W. M.; Section 31, Township 13 North, Range 28 East, W. M.; Sections 6 and 5 in Township 12 North, Range 28 East, W. M., to the right bank of the Columbia River, thence Northwesterly, Northerly, Westerly and Southwesterly up the right bank of said Columbia River to the Northwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M., thence South along the West line of said Lot 4 to the point of beginning, together with second class shorelands adjoining Lot 4 in Section 6,

Township 13 North, Range 26 East, W. M., in Benton County, Washington.

also:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner of the North boundary of said section; thence East along said North boundary line of said section to the West bank of the Columbia River; thence in a Southeast direction along said West bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning; and also,

Lots three (3), four (4), seven (7) and eight (8), and second class shore lands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section two (2), Township thirteen (13) North, Range twenty-three (23) East, W. M.; and also,

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway

Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington; and also,

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, Page 418, under Auditor's file No. 41775, records of Yakima County, Washington. All in Yakima County, Washington.

V.

For the purpose of setting forth a particular description of the property selected for acquisition and the names of each and every owner, encumbrancer, tenant or other person or party interested in the same or any part thereof, diligent search has been made of the public records of the state and county wherein said lands are located. Said persons with respect to said tracts are as hereinafter set forth, to-wit:

Parcel PR-1: Tract No. W-2004

Priest Rapids Irrigation District, a municipal corporation of the State of Washington
State of Washington, a sovereign state

Northern Pacific Railway Company, a Wisconsin corporation

Bankers Trust Company, a corporation, successor to Mercantile Trust Company, a corporation

City Bank & Farmers Trust Company, a corporation, successors to Farmers' Loan and Trust Company, a corporation

Harry A. Scandrett, Walter J. Cummings and George I. Haight, as Trustees of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a Wisconsin corporation

Chemical Bank & Trust Company, successor by merger to United States Mortgage and Trust Company, a New York corporation; and Howard B. Smith, successor to Calvert Brewer, as Trustees

Guaranty Trust Company of New York, a New York corporation, and Arthur E. Burke, as Trustees

The National City Bank of New York, a national banking association, and William M. Hoffman, as Trustees

Selah Consolidated School District No. 119 of Yakima County, Washington (successor by consolidation to Selah School District No. 116; successor by consolidation to Pleasant Valley School District No. 84; successor to School District No. 97 by annexation)

Parcel PR-2

Priest Rapids Irrigation District, a municipal corporation of the State of Washington

State of Washington, a sovereign state

Parcel PR-3: Tract No. G-452

Priest Rapids Irrigation District, a municipal corporation of the State of Washington

State of Washington, a sovereign state [93]

Parcel PR-4

Priest Rapids Irrigation District, a municipal corporation of the State of Washington

State of Washington, a sovereign state

Parcel PR-5

Priest Rapids Irrigation District, a municipal corporation of the State of Washington

State of Washington, a sovereign state

In addition thereto petitioner joins as parties hereto all other persons, parties, firms or corporations unknown having or claiming to have any right, title, estate, lien or interest in or to the land above described or any portion thereof. [94]

VI.

That the real property and interests therein described in paragraph IV hereof constitute all of the operating properties and facilities owned of record or claimed by the Priest Rapids Irrigation District, a municipal corporation of the State of Washington. That petitioner, United States of America, by reason of its ownership of all the real property lying within the boundaries of said Priest Rapids Irrigation District is in truth and in fact the equitable owner of the real property and interests therein described in paragraph IV hereof, subject only to the lien of the bonded indebtedness of said Priest Rapids Irrigation District, and said

Priest Rapids Irrigation District, a municipal corporation of the State of Washington, now holds legal title thereto in trust for the use and benefit of petitioner, United States of America. That the sum of \$170,500.00 deposited in the registry of this court with the filing of declaration of taking, No. 99 herein represents a sum which together with the bond redemption fund of said Priest Rapids Irrigation District is sufficient to pay and discharge all bonded indebtedness of said Priest Rapids Irrigation District. [95]

Wherefore, your petitioner prays:

1. That the purpose of this condemnation be adjudicated to be a public use.
2. That the payments to be made from the sum heretofore deposited in the registry of this court be ascertained and determined by the court and that the parties entitled to receive such payments be determined thereby.
3. That the property hereinabove described be decreed to be the property of the United States.
4. That the court grant such other relief as shall seem proper in the premises.

BERNARD H. RAMSEY

Special Assistant to
The Attorney General

DAN P. McLOUGHLIN

Special Attorney
Department of Justice

EDWARD M. CONNELLY

United States Attorney
Attorneys for Petitioner

State of Washington,
County of Yakima—ss.

Dan P. McLoughlin, being first duly sworn, upon oath deposes and says: That he is a duly appointed, qualified, and acting Special Attorney for the Department of Justice, and as such makes this verification; that he has read the foregoing petition for condemnation, knows the contents thereof and that the same is true, to the best of his knowledge, information and belief.

DAN P. McLOUGHLIN

Subscribed and sworn to before me this 12th day of May, 1944.

[Seal] M. C. DELLE,
Notary Public in and for the State of Washington,
residing at Yakima.

[Endorsed]: Filed May 12, 1944.

[Title of District Court and Cause]

DECLARATION OF TAKING NO. 99

To the Honorable, the United States District Court:

I, Henry L. Stimson, Secretary of War of the United States, do hereby declare that:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further au-

thority of the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518; 50 U.S.C. sec. 171) and March 277, 1942 (Public Law 507 - 77th Congress), which acts authorize the acquisition of land for military or other war purposes, and the Act of Congress approved July 2, 1942 (Public Law 649 - 77th Congress), which act appropriated funds for such purposes.

(b) The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for the establishment of a military reservation and for other military uses incident thereto. The said lands have been selected by me for acquisition by the United States for use in connection with the establishment of the Hanford Engineer Works and for such other uses as may be authorized by Congress or by Executive Order, and are required for immediate use.

2. A general description of the lands being taken is set forth in Schedule "A" attached hereto and made a part hereof and is a description of part of the same lands described in the petition in the above entitled cause. [98]

3. The estate taken for said public uses is:

- (1) The fee simple title to the lands described as Parcel PR-1, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, and also subject

to all easements and rights of whatever nature, owned by the Washington Irrigation and Development Company.

- (2) The existing rights and/or easements of the Priest Rapids Irrigation District to construct, operate, maintain and patrol an electric power transmission line and appurtenances in, over, upon and across the land described as Parcel PR-2.
- (3) The fee simple title to the lands described as Parcel PR-3, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines.
- (4) The fee simple absolute title to the property described as Parcel PR-4.
- (5) All right, title or interest of the Priest Rapids Irrigation District in and to the lands described as Parcel PR-5.

4. A plan showing the lands taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said lands, with all buildings and improvements thereon and all appurtenances thereto, and including any and all interests hereby taken in said lands, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the Registry of said Court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said lands will probably be within any limits prescribed by law as the price to be paid therefor.

In Witness Whereof, the petitioner, by its Secretary of War, thereunto authorized, has caused this declaration to be signed in its name [99] by said Henry L. Stimson, Secretary of War, this is the 4th day of May, A. D. 1944, in the City of Washington, District of Columbia.

HENRY L. STIMSON,

Secretary of War of the United States.

Schedule "A"

The land which is the subject matter of this Declaration of Taking is situate in the Counties of Benton and Yakima, State of Washington. A description of the lands taken, together with the names of the purported owners thereof and a statement of the sum estimated to be just compensation therefor is as follows:

Parcel PR-1—Tract No. W-2004

Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is 986½ feet West of the quarter section corner on the North boundary of said section; thence East along said North bound-

ary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W. M.

Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

Parcel D:

Lots three (3) and four (4), second class shorelands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by

deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

and also:

Together with all rights of the Priest Rapids Irrigation District, a Washington corporation, to construct and maintain wing dams for power canal for water plant in Columbia River at Priest Rapids, which is immediately adjacent to the lands above described, and also including the right to divert the water of the Columbia River at Priest Rapids for the purpose of developing power upon the lands above described, and also all of those certain head-gates, headworks, wing dams, embankments, concrete power house, wing walls, gates and draft tubes located upon, appurtenant to or used in connection with the above described lands, together with all water rights appurtenant thereto or used in connection with the lands heretofore described. All in Yakima County, Washington.

Parcel PR-2

All presently existing easements and/or rights of the Priest Rapids Irrigation District, a Washington corporation, for the construction, operation, maintenance and patrol of an electric power transmission line running from its power house site located in Parcel PR-1, to its pumping station site located in Parcel PR-3, including all poles, wires and appurtenances. The approximate location of said transmission line is as follows:

That certain 66,000 volt transmission line known as "The Hanford-Priest Rapids Line," including poles, wires, insulators, cross arms, guys, props and hardware, and beginning at the power house located on the land described in Parcel PR-1 in Section 2, Township 13 North, Range 23 East, M. W.; and extending in a Southeasterly direction through Sections 2, 11 and 12 Township 13 North, Range 23 East, W.M., to the Southeast corner of Section 12, Township 13 North, Range 23 East, W.M.; and then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 24 East, W. M.; then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 25 East, W. M.;

Also that certain branch line known as the "Coyote Stub Line," beginning at a point on the main 66,000 volt Hanford-Priest Rapids Line at the Northeast corner of Section 13, Township 13 North, Range 25 East, W. M., and extending in a Northerly direction along the East line of Sections 12 and 1, Township 13 North, Range 25 East, W. M.; and then across Section 6, Township 13 North, Range 26 East, W. M., to the Coyote Pumping Station formerly owned by the Hanford Irrigation & Power Company, and which is located upon land hereinafter described in Parcel PR-3 as Tract No. G-452.

All in Yakima and Benton Counties, Washington.

Parcel PR-3—Tract No. G-452

Government Lot Four (4), Section six (6), Township thirteen (13) North, Range twenty-six (26)

East, W. M., together with second class shore lands adjoining, in Benton County, Washington, containing 16.72 acres, more or less.

Parcel PR-4

All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation.

Parcel PR-5

All right, title or interest of the Priest Rapids Irrigation District, a Washington corporation, in and to the following described lands, including all canals, ditches, laterals, pipe lines, easements, rights of way and appurtenances owned by said Priest Rapids Irrigation District:

Beginning at the Southwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M.; thence East along South line of said Lot 4 to its Southeast corner; thence North along the East line of said Lot 4 to the Southerly right-of-way line of the Priest Rapids Irrigation District canal right-of-way; thence along said canal right-of-way line through Section 6 in said Township and Range; Sections 31, 32, 33, 34, 27, 26, 25, and 36 in Township 14 North, Range 26 East, W.M.; Section 1, Township 13 North, Range 26 East, W. M.; Sections 6, 7, 8, 17, 16, 21, 28, 27, 26, 35, and 36 in Township 13 North, Range 27 East, W. M.; Section 31, Township 13 North, Range 28 East, W. M.; Sections 6 and 5 in Township 12 North, Range 28

East, W. M.; to the right bank of the Columbia River, thence Northwesterly, Northerly, Westerly and Southwesterly up the right bank of said Columbia River to the Northwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W.M., thence South along the West line of said Lot 4 to the point of beginning, together with second class shore lands adjoining Lot 4 in Section 6, Township 13 North, Range 26 East, W.M., in Benton County, Washington.

also:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner of the North boundary of said section; thence East along said North boundary line of said section to the West bank of the Columbia River; thence in a Southeast direction along said West bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning; and also,

Lots three (3), four (4), seven (7) and eight (8), and second class shore lands of the Columbia River abutting thereon and the Northwest quarter of the

Southwest quarter of Section two (2), Township thirteen (13) North, Range twenty-three (23) East, W. M.; and also,

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington; and also,

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, Page 418, under Auditor's file No. 41775, records of Yakima County, Washington. All in Yakima County, Washington.

Name of Purported Owner of Parcel PR-1 to Parcel PR-5, inclusive: Priest Rapids Irrigation District, a Washington corporation.

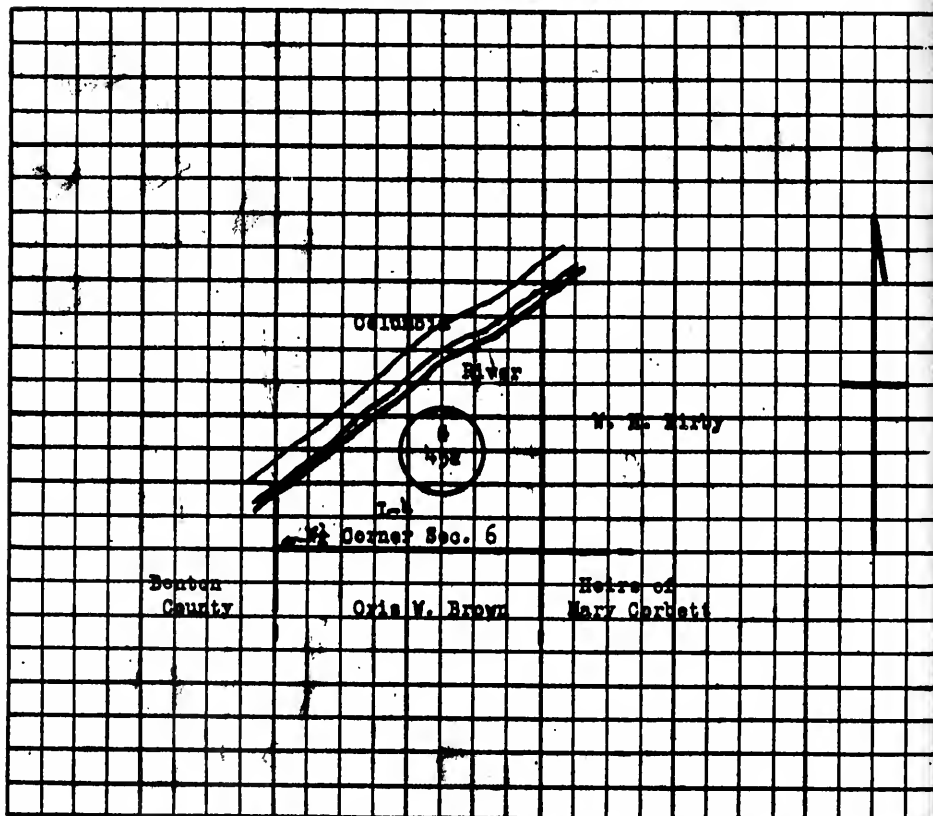
Address of Purported Owner: Hanford, Washington.

Estimated Compensation: One Hundred Seventy thousand five hundred and no/100 dollars (\$170,500.00).

The gross sum estimated as just compensation for the lands hereby taken is one hundred seventy thousand five hundred and no/100 dollars (\$170,500.00). [104]

CR FORM 29
(4-15-43)WAR DEPARTMENT
Office Division Engineer
Pacific Division
Real Estate BranchProject Hanford Engineer
Works
Tract G-452TRACT MAP (WITH GRID)Name of Owner Priest Rapids Irrigation DistrictDescription of tract: State Washington County BentonLot 4, Section 6, Township 13 North, Range 26 E. W. M.TOGETHER with second class shore lands adjoining.

(Scale: 5 inches equals 1 mile)



CLASSES OF LAND

Crop land ☐
 Pasture land ☐
 Forest land ☐
☐

Grades of each class of land must
 be shown on the map proper.

* Name of any other class of land
 involved.

SCHEDULE "B"

I certify that this is an accurate map of Tract G-452
 based on Title Certificate, which
 shows this tract to contain 16.72 acres, more or less.
 Name Henry T. Holler
 Title ASSIST. ENGR.
 Date 9/4/43
 Indicate whether map is based on General Land Office
 records, aerial survey, deed description or actual survey.

CR Form 30
(4-15-43)

WAR DEPARTMENT
Office Division Engineer
Pacific Division
Real Estate Branch

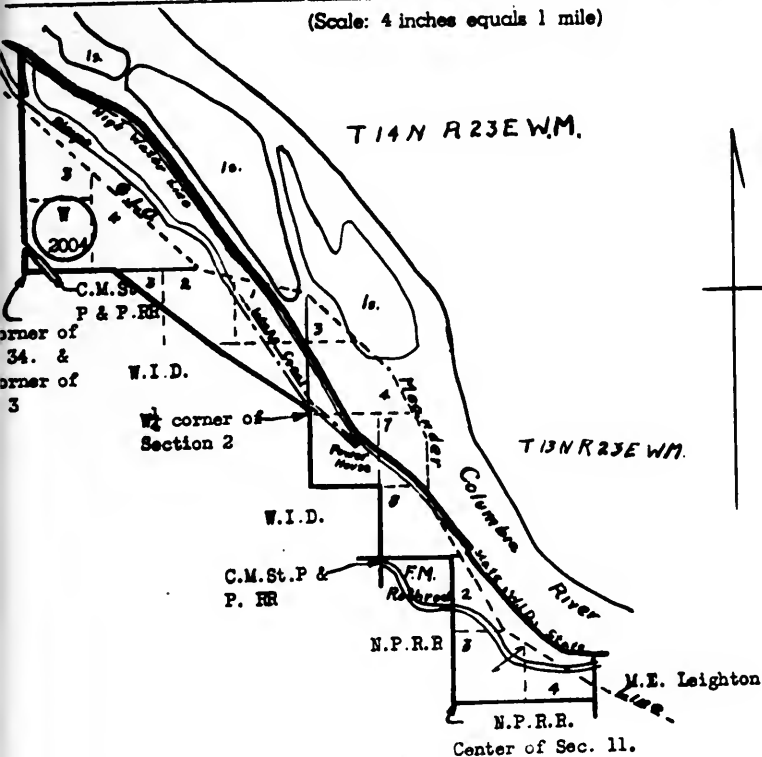
Project Hanford Eng. Wks.

Tract W-2004

TRACT MAP (WITHOUT GRID)

Name of owner Priest Rapids Irrigation District
Description of tract: State Washington County Yakima
See attached sheet.

(Scale: 4 inches equals 1 mile)



CLASSES OF LAND

Crop land ☐
Pasture land ☐
Forest land ☐
Other ☐

The grades of each class of land must be shown on the map proper.
* Name of any other class of land involved.

Schedule "B"

I certify that this is an accurate map of Tract W-2004 based on Title Certificate

(aerial survey) (deed description) (actual survey) which shows this tract to contain 506.50 acres, more or less, and I further certify that the above described land is substantially the same land as that described in a deed from

to _____ dated _____ and recorded in Deed Book _____, Page _____ in the _____ County Records.
Harry T. Hallas Asst. Engineer. 12-16-43
(Name) (Title) (Date)

Description to Tract W-2004, County of Yakima,
State of Washington.

Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner on the North boundary of said section; thence East along said North boundary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W. M.

Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwau-

kee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

Parcel D:

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

[Endorsed]: Filed May 12, 1944.

In the District Court of the United States for the
Eastern District of Washington, Southern
Division

No. 128-99

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS, PRIEST RAPIDS
IRRIGATION DISTRICT, et al.,

Defendants.

ORDER ON DECLARATION OF TAKING

As to Parcel PR-1, Tract No. W-2004, Parcel
PR-2, Parcel PR-3, Tract No. G-452, Parcel
PR-4, Parcel PR-5.

This matter came on regularly this day for an
ex parte hearing up the motion of the United States
of America appearing through its attorneys of
record.

It appearing to the court that a petition for con-
demnation was filed herein on February 23, 1943,
and an amended petition for condemnation was filed
herein on April 22, 1943 covering the premises here-
inafter described and that an order was entered on
February 23, 1943 and a further order was entered
on April 22, 1943, granting to the petitioner the
right of immediate possession of said premises pur-
suant to the provisions of the Second War Powers

Act of 1942 (Public Law No. 507—77th Congress) approved March 27, 1942; that a declaration of taking has since been filed, signed by the authority empowered by law to acquire the lands described in the petition for condemnation, declaring that said lands were thereby taken for the use of the United States; that said declaration of taking contains a statement of the authority under which, and the public use for which, said lands were taken; a description of the lands taken sufficient for the identification thereof; a statement of the estate or interest in said lands taken for said public use; a plan showing the lands taken; and a statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken. Said declaration of taking further includes a statement that in the opinion of the chief of the executive department or agency empowered to acquire the land, the ultimate award probably will be within any limits prescribed by Congress on the price to be paid. [109]

It further appeared that simultaneously with the filing of said declaration of taking, to-wit: on May 12, 1944, pursuant to the Act of Congress of February 26, 1931, (46 Stat., 1421), Chapter 307, there was deposited in the registry of the court, to the use of the persons entitled thereto, the amount of the estimated compensation stated in said declaration of taking, to-wit: One hundred seventy thousand five hundred and no/100 dollars (\$170,500.00).

It further appearing that pursuant to said orders granting the right of immediate possession entered herein on February 23, 1943 and April 22, 1943, pos-

session was taken by the petitioner of the following described property, to-wit:

- (1) The fee simple title to the lands described as Parcel PR-1, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, and also subject to all easements and rights of whatever nature, owned by the Washington Irrigation and Development Company.
- (2) The existing rights and/or easements of the Priest Rapids Irrigation District to construct, operate, maintain and patrol an electric power transmission line and appurtenances in, over, upon and across the land described as Parcel PR-2.
- (3) The fee simple title to the lands described as Parcel PR-3, subject, however, to existing easements for public road and highways, for public utilities, for railroads and for pipe lines.
- (4) The fee simple absolute title to the property described as Parcel PR-4.
- (5) All right, title or interest of the Priest Rapids Irrigation District in and to the lands described as Parcel PR-5, said lands situate in Benton and Yakima Counties, Washington, and more particularly described as follows:

Parcel PR-1—Tract No. W-2004

Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner on the North boundary of said section; thence East along said North boundary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W. M.

Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway

Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

Parcel D:

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

and also:

Together with all rights of the Priest Rapids Irrigation District, a Washington corporation, to construct and maintain wing dams for power canal for water plant in Columbia River at Priest Rapids, which is immediately adjacent to the lands above described, and also including the right to divert the water of the Columbia River at Priest Rapids for the purpose of developing power upon the lands above described, and also all of those certain head-gates, headworks, wing dams, embankments, concrete power house, wing walls, gates and draft tubes located upon, appurtenant to or used in connection with the above described lands, together with all water rights appurtenant thereto or used in connection with the lands heretofore described. All in Yakima County, Washington.

Parcel PR-2

All presently existing easements and/or rights of the Priest Rapids Irrigation District, a Washington corporation, for the construction, operation, maintenance and patrol of an electric power transmission line running from its power house site located in Parcel PR-1, to its pumping station site located in Parcel PR-3, including all poles, wires and appurtenances. The approximate location of said transmission line is as follows:

That certain 66,000 volt transmission line known as "The Hanford-Priest Rapids Line," including poles, wires, insulators, cross arms, guys, props and hardware, and beginning at the power house located on the land described in Parcel PR-1 in Section 2, Township 13 North, Range 23 East, M. W.; and extending in a Southeasterly direction through Sections 2, 11 and 12 Township 13 North, Range 23 East, W. M., to the Southeast corner of Section 12, Township 13 North, Range 23 East, W.M.; and then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 24 East, W. M.; then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 25 East, W. M.;

Also that certain branch line known as the "Coyote Stub Line," beginning at a point on the main 66,000 volt Hanford-Priest Rapids Line at the Northeast corner of Section 13, Township 13 North, Range 25 East, W. M., and extending in a Northerly direction along the East line of Sections 12 and 1,

Township 13 North, Range 25 East, W. M.; and then across Section 6, Township 13 North, Range 26 East, W. M., to the Coyote Pumping Station formerly owned by the Hanford Irrigation & Power Company, and which is located upon land hereinafter described in Parcel PR-3 as Tract No. G-452.

All in Yakima and Benton Counties, Washington.

Parcel PR-3—Tract No. G-452

Government Lot Four (4), Section six (6), Township thirteen (13) North, Range twenty-six (26) East, W. M., together with second class shore lands adjoining, in Benton County, Washington, containing 16.72 acres, more or less.

Parcel PR-4

All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation.

Parcel PR-5

All right, title or interest of the Priest Rapids Irrigation District, a Washington corporation, in and to the following described lands, including all canals, ditches, laterals, pipe lines, easements, rights of way and appurtenances owned by said Priest Rapids Irrigation District:

Beginning at the Southwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M.; thence East along South line of said Lot 4 to its Southeast corner; thence North along the East line of said Lot 4 to the Southerly

right-of-way line of the Priest Rapids Irrigation District canal right-of-way; thence along said canal right-of-way line through Section 6 in said Township and Range; Sections 31, 32, 33, 34, 27, 26, 25, and 36 in Township 14 North, Range 26 East, W. M.; Sections 6, 7, 8, 17, 16, 21, 28, 27, 26, 35, and 36 in Township 13 North Range 27 East, W. M.; Section 31, Township 13 North, Range 28 East, W. M.; Sections 6 and 5 in Township 12 North, Range 28 East, W. M., to the right bank of the Columbia River, thence Northwesterly, Northerly, Westerly and Southwesterly up the right bank of said Columbia River to the Northwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M., thence South along the West line of said Lot 4 to the point of beginning, together with second class shorelands adjoining Lot 4 in Section 6, Township 13 North, Range 26 East, W. M., in Benton County, Washington.

also:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner of the North boundary of said section; thence East along said North boundary line of said section to the West bank of the

Columbia River; thence in a Southeast direction along said West bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning; and also,

Lots three (3), four (4), seven (7) and eight (8), and second class shore lands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section two (2), Township thirteen (13) North, Range twenty-three (23) East, W. M.; and also,

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington; and also,

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, Page 418,

under Auditor's file No. 41775, records of Yakima County, Washington. All in Yakima County, Washington.

Now, Therefore, It Is Hereby Ordered that possession of the above described property be and the same is hereby confirmed, and that notice of the entry of this order be given on or before May 20, 1944, to record owners of said premises by depositing certified copies thereof in the United States registered mail in envelopes addressed to each such persons; provided, that when the persons so to be notified are husband and wife, one such notice addressed jointly to both shall be sufficient. Included with such notices shall be a statement of the amount of compensation deposited as to the tract or tracts owned by such record owner.

It Is Further Ordered that taxes, levies and assessments due on the property herein described shall bear no interest from and after May 12, 1944, the date of filing the declaration of taking herein and the deposit of estimated just compensation in court.

Dated this 15th day of May, 1944.

L. B. SCHWELLENBACH,
United States District Judge.

Presented by:

FRANK B. REID,
Special Attorney of the Department of Justice.

Filed May 15, 1944. [114]

[Title of District Court and Cause.]

APPEARANCE OF PRIEST RAPIDS
IRRIGATION DISTRICT

To the United States of America, Petitioner, and
to Edward M. Connelly, Harvey Erickson and
Edward J. Crowley, its attorneys:

You and each of you will please take notice that
the undersigned attorneys hereby enter their ap-
pearance in the above action for the defendants
below named and all further pleadings, except pro-
cess, are to be served on said attorneys at their
address below stated.

MOULTON & POWELL,
Attorneys for Defendant
Priest Rapids Irrigation
District.

Copy received August 18th, 1944.

FRANK B. REID,
Of Attorneys for Petitioner

Filed Aug. 19, 1944.

In the District Court of the United States, for the
Eastern District of Washington, Southern Division

No. 128-99

UNITED STATES OF AMERICA,

Petitioner,

vs.

CLEMENTS P. ALBERTS, et al.,

Defendants,

STATE OF WASHINGTON, PRIEST RAPIDS
IRRIGATION DISTRICT, a corporation,
Stipulating Defendants.

STIPULATION FIXING COMPENSATION FOR BONDS

The undersigned stipulating defendants appearing generally and waiving notice of service, and the petitioner, the United States of America, appearing by and through Bernard H. Ramsey, Special Assistant to the Attorney General of the United States of America, by authority and under the direction of the Attorney General of the United States of America,

Do hereby Stipulate and agree that the sum of One Hundred Sixty One Thousand Six Hundred Fifty and no/100 Dollars (\$161,650.00) shall forthwith be paid to and accepted by the State of Wash-

ington in full satisfaction, settlement and payment of all of the bonds the Priest Rapids Irrigation District, a corporation, now held or owned by the State of Washington or any of its departments, which bonds consist of eighty-nine (89) two and one-half per cent ($2\frac{1}{2}\%$) bonds of the par value of One Thousand and no/100 Dollars (\$1000.00) each, and sixty-eight (68) five per cent (5%) bonds of the par value of One Thousand and no/100 Dollars (\$1000.00) each, together with all interest thereon. [116]

It is further stipulated and agreed that the said sum of One Hundred Sixty One Thousand Six Hundred Fifty and no/100 Dollars (\$161,650.00) shall be in full settlement of any and all claims of whatsoever nature the State of Washington may have by virtue of its ownership of said bonds and in full satisfaction of any and all claims that the State of Washington has against any of the lands of or within the boundaries of the Priest Rapids Irrigation District, a corporation, by virtue of its ownership of the bonds of said district.

It is further stipulated and agreed that an order be entered in this action ordering and directing the State of Washington to forthwith deliver to the Clerk of the above entitled Court all of said bonds, and that said order further specify that the Clerk of the above entitled Court be directed and empowered upon receipt of said bonds to immediately disburse the said sum of One Hundred Sixty One Thousand Six Hundred Fifty and no/100

Dollars (\$161,650.00) as aforesaid to the State of Washington out of the funds now on deposit in this action.

It is stipulated and agreed, however, that by the signing of this stipulation the defendant, Priest Rapids Irrigation District, a corporation, does so without prejudice to its right to contest the amount of the deposit or the right to additional compensation for the taking of the lands, water rights and facilities described in this action.

UNITED STATES OF AMERICA,
By BERNARD H. RAMSEY,
Special Assistant to the Attorney
General.

STATE OF WASHINGTON,
By SMITH TROY,
Attorney General.

By HAROLD PEBBLES,
Assistant Attorney General.

PRIEST RAPIDS IRRIGATION
DISTRICT, a corporation,
By R. S. REIERSON,
Secretary.

CHARLES L. POWELL,
Attorney for Priest Rapids Irriga-
tion District, a corporation.

Filed Aug. 19, 1944 [117]

[Title of District Court and Cause.]

JUDGEMENT ORDERING PAYMENT
OF BONDS

This cause coming on for hearing this day upon stipulation of the United States of America, the State of Washington and Priest Rapids Irrigation District, a corporation, stipulating defendants herein; wherein it is stipulated and agreed that the stipulating defendant State of Washington is the owner and holder of 89 $2\frac{1}{2}\%$ Bonds and 68 5% Bonds of the said Priest Rapids Irrigation District, a corporation, of the par value of \$1000.00 each, and that the payment to the State of Washington of the sum of One Hundred Sixty-One Thousand Six Hundred Fifty and No/100 Dollars (\$161,650.00) by the United States of America, petitioner herein, shall be in full and complete payment and satisfaction of all of said Bonds, together with all of the interest due or to become due thereon, and of the indebtedness evidenced therefrom, and of any and all claims of the State of Washington by reason of its ownership of said Bonds; and

It further appearing from said stipulation that, upon delivery of all said bonds to the Clerk of the Court, the sum of One Hundred Sixty-One Thousand Six Hundred Fifty and No/100 Dollars (\$161,650.00) shall forthwith be paid to the State of Washington out of the funds heretofore deposited in the registry of the Clerk of this court by petitioner in this docket; and

It further appearing from said stipulation that the defendant Priest Rapids Irrigation District, a corporation, joined in said stipulation solely for the [118] purpose of agreeing to the payment of said Bonds and the correctness of the amount due thereon, without prejudice to any right it may otherwise have to contest the amount of just compensation to be paid for the taking of the lands and facilities described in the Amended Petition on file in this action, and the Court being fully advised;

It is ordered, adjudged and decreed that the defendant State of Washington shall forthwith deliver to the Clerk of this Court all of said Bonds held by it in the Priest Rapids Irrigation District; and

It is further ordered, adjudged and decreed: that upon the receipt of said Bonds the Clerk of this court is hereby ordered and directed to pay to the State of Washington, care of Smith Troy, Attorney General of the State of Washington, at Olympia, Washington, the sum of One Hundred Sixty-One Thousand Six Hundred Fifty and no/100 Dollars (\$161,650.00) from the sum on deposit in Docket 128-99; and

It is further ordered, adjudged and decreed: That upon final payment therefor, said Bonds be, and they are, hereby ordered cancelled, and the Clerk of this court is hereby ordered and directed to mark each and every one of said Bonds with the word "Paid" upon the *fact* thereof by *performance* or other plainly legible means, and inform the Treasurer of Benton County, Washington, as ex-officio

Treasurer of the defendant Priest Rapids Irrigation District, a corporation, of such action, and that the records of said County Treasurer be made to conform to such cancellation;

It is further ordered, adjudged and decreed that the Court retain jurisdiction of this proceeding for the purpose of making such further orders, judgments and decrees as may be necessary.

Dated this 19 day of August, 1944.

L. B. SCHWELLENBACH,
United States District Judge.

Presented by:

FRANK B. REID,
Special Attorney,
Department of Justice.

Filed August 19, 1944. [119]

[Title of District Court and Cause.]

STIPULATION FIXING COMPENSATION FOR BONDS

The undersigned stipulating defendants appearing generally and waiving notice of service, and the petitioner, the United States of America, appearing by and through Bernard H. Ramsey, Special Assistant to the Attorney General of the United States of America, by authority and under the direction of the Attorney General of the United States of America,

Do hereby stipulate and agree that the sum of Five Thousand One Hundred Twenty Five and no/100 Dollars (\$5,125.00) shall forthwith be paid to and accepted by the Fireman's Relief and Pension Fund Board of Bellingham, Washington, in full satisfaction, settlement and payment of all of the bonds the Priest Rapids Irrigation District, a corporation, now held or owned by the Fireman's Relief and Pension Fund Board of Bellingham, Washington, which bonds consist of five (5) five per cent (5%) bonds of the par value of One Thousand and no/100 Dollars (\$1000.00) each, together with all interest thereon. [120]

It is further stipulated and agreed that the said sum of Five Thousand One Hundred Twenty Five and no/100 Dollars (\$5,125.00) shall be in full settlement of any and all claims of whatsoever nature the Fireman's Relief and Pension Fund Board of Bellingham, Washington, may have by virtue of its ownership of said bonds and in full satisfaction of any and all claims that the Fireman's Relief and Pension Fund Board of Bellingham, Washington, has against any of the lands of or within the boundaries of the Priest Rapids Irrigation District, a corporation, by virtue of its ownership of the bonds of said district.

It is further stipulated and agreed that an order be entered in this action ordering and directing the Fireman's Relief and Pension Fund Board of Bellingham, Washington, to forthwith deliver to the Clerk of the above entitled Court all of said bonds, and that said order further specify that the

Clerk of the above entitled Court be directed and empowered upon receipt of said bonds to immediately disburse the said sum of Five Thousand One Hundred Twenty Five and no/100 Dollars (\$5,-125.00) as aforesaid to the Fireman's Relief and Pension Fund Board of Bellingham, Washington, out of the funds now on deposit in this action.

It is stipulated and agreed, however, that by the signing of this stipulation the defendant, Priest Rapids Irrigation District, a corporation, does so without prejudice to its right to contest the amount of the deposit or the right to additional compensation for the taking of the lands, water rights, and facilities described in this action.

UNITED STATES OF AMERICA,
By BERNARD H. RAMSEY,
Special Assistant to The Attorney
General.

[Seal]

FIREMAN'S RELIEF AND PEN-
SION FUND BOARD of Belling-
ham, Washington.

By JACK MULHERN,
City Comptroller.
PRIEST RAPIDS IRRIGATION
DISTRICT, a corporation
By R. S. REIERSON,
Secretary.

State of Washington,
County of Yakima—ss.

R. S. Reiersen, being first duly sworn, on oath deposes and says: That he is the Secretary of the defendant, Priest Rapids Irrigation District, a municipal corporation of the State of Washington, and that he has been duly authorized by proper resolution of said corporation, adopted on the 6th day of Sept. 1944, to execute the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; that he has read the foregoing instrument, and that the statements contained therein are true, and he verily believes, and further that the seal affixed thereto is the corporate seal of said corporation.

[Seal] R. S. REIERSON,

Subscribed and sworn to before me this 8th day of Sept., 1944.

[Seal] JUNE FOWLES,

Notary Public in and for the State of Washington, residing at Olympia. My commission expires Jan. 6, 1945.

State of Washington,
County of—ss.

Jack Mulhern, being first duly sworn, on oath deposes and says: That he is the duly qualified and acting City Comptroller of the City of Bellingham, Washington, a political sub-division of the State of Washington, and as such is duly authorized to execute the foregoing petition for and on behalf of the Fireman's Relief and Pension Fund Board of Bellingham, Washington, that he has read the foregoing petition, knows the contents thereof, and that the statements therein contained are true and correct.

JACK MULHERN.

Subscribed and sworn to before me this 29th day of Aug., 1944.

[Seal] JOSEPH PEMBERTON,
Notary Public in and for the State of Washington, residing at.....

My commission expires Jan. 23, 1947.

Filed Sept. 19, 1944. [123]

[Title of District Court and Cause.]

JUDGMENT ORDERING PAYMENT
OF BONDS

This cause coming on for hearing this day upon stipulation of the United States of America, the Fireman's Relief and Pension Fund Board of Bellingham, Washington, and Priest Rapids Irrigation

District, a corporation, stipulating defendants herein, wherein it is stipulated and agreed that the stipulating defendant, Fireman's Relief and Pension Fund Board of Bellingham, Washington, is the owner and holder of five (5) per cent (5%) bonds of the said Priest Rapids Irrigation District, a corporation, of the par value of One Thousand and No/100 Dollars (\$1000.00) each and that the payment to the Fireman's Relief and Pension Fund Board of Bellingham, Washington, of the sum of Five Thousand One Hundred Twenty Five and No/100 Dollars (\$5,125.00) by the United States of America, petitioner herein, shall be in full and complete payment and satisfaction of all of said bonds together with all of the interest due or become due thereon and of the indebtedness evidenced therefrom and of any and all claims of the Fireman's Relief and Pension Fund Board of Bellingham, Washington, by reason of its ownership of said bonds; and

It further appearing from said stipulation that upon delivery of all said bonds to the Clerk of the Court that the sum of Five Thousand One Hundred Twenty-Five and No/100 Dollars (\$5,125.00) shall forthwith be paid to the [124] Fireman's Relief and Pension Fund Board of Bellingham, Washington, out of the funds heretofore deposited in the registry of the Clerk of this Court by petitioner in this Docket; and

It further appearing from said stipulation that the defendant, Priest Rapids Irrigation District, a corporation, joined in said stipulation solely for

the purpose of agreeing to the payment of said bonds and correctness of the amount due thereon, without prejudice to any right it may otherwise have to contest the amount of just compensation to be paid for the taking of the lands and facilities described in the Amended-Complaint on file in this action, and the Court being fully advised;

It is ordered, adjudged and decreed that the defendant, Fireman's Relief and Pension Fund Board of Bellingham, Washington, shall forthwith deliver to the Clerk of this Court all of said bonds held by it in the Priest Rapids Irrigation District; and

It is further ordered, adjudged and decreed that upon the receipt of said bonds the Clerk of this Court is hereby ordered and directed to pay to the Fireman's Relief and Pension Fund Board of Bellingham, Washington, c/o Jack Mulhern, City Comptroller, Bellingham, Washington, the sum of Five Thousand One Hundred Twenty-Five and No/100 Dollars (\$5,125.00) from the sum on deposit in Docket 128-99; and

It is further ordered, adjudged and decreed that upon final payment therefor, said bonds be, and they are hereby ordered cancelled, and the Clerk of this Court is hereby ordered and directed to mark each and every one of said bonds with the word "paid" upon the face thereof by perforation or other plainly legible means, and inform the Treasurer of Benton County, Washington, as ex-officio Treasurer of the defendant, Priest Rapids Irrigation District, a corporation, of such action and that the records of said county Treasurer *by* made to conform to such cancellation; and

It is further ordered, adjudged and decreed that the Court retain jurisdiction of this proceeding for the purposes of making such further orders, judgments, and decrees as may be necessary.

Dated this 19 day of September, 1944.

L. B. SCHWELLENBACH,
United States District Judge.

Presented by:

RAYMOND G. BROWN,
Special Attorney, Department
of Justice.

Filed September 19, 1944. [125]

In the District Court of the United States, for the
Eastern District of Washington, Southern Di-
vision

No. 128-99

UNITED STATES OF AMERICA,
Petitioner,
vs.

CLEMENTS P. ALBERTS, et al.,
Defendants,

EMILY CORBETT,
PRIEST RAPIDS IRRIGATION
DISTRICT, a corporation,
Stipulating Defendants.

STIPULATION FIXING COMPENSATION
FOR BONDS

The Undersigned stipulating defendants appearing generally and waiving notice of service, and the petitioner, the United States of America, appearing by and through Bernard H. Ramsey, Special Assistant to the Attorney General of the United States of America, by authority and under the direction of the Attorney General of the United States of America,

Do hereby stipulate and agree that the sum of Three Thousand Seventy Five and no/100 Dollars (\$3,075.00) shall forthwith be paid to and accepted by the defendant, Emily Corbett, in full satisfaction, settlement and payment of all of the bonds the Priest Rapids Irrigation District, a corporation, now held or owned by Emily Corbett, which bonds consist of three (3) five per cent (5%) bonds of the par value of One Thousand and no/100 Dollars (\$1000.00) each, together with all interest thereon.

It is further stipulated and agreed that the said sum of Three Thousand Seventy Five and no/100 Dollars (\$3,075.00) shall be in full settlement of any and all claims of whatsoever nature the defendant, Emily Corbett, may have by virtue of her ownership of said bonds and in full satisfaction of any and all claims the defendant, [126] Emily Corbett, has against any of the lands of or within the boundaries of the Priest Rapids Irrigation District, a corporation, by virtue of its ownership of the bonds of said district.

It is further stipulated and agreed that an order be entered in this action ordering and directing the defendant, Emily Corbett, to forthwith deliver to the Clerk of the above entitled Court all of said bonds, and that said order further specify that the Clerk of the above entitled Court be directed and empowered upon the receipt of said bonds to immediately disburse the said sum of Three Thousand Seventy Five and no/100 Dollars (\$3,075.00) as aforesaid to Emily Corbett out of the funds now on deposit in this action.

It is stipulated and agreed, however, that by the signing of this stipulation the defendant, Priest Rapids Irrigation District, a corporation, does so without prejudice to its right to contest the amount of the deposit or the right to additional compensation for the taking of the lands, water rights and facilities described in this action.

UNITED STATES OF AMERICA

By BERNARD H. RAMSEY,

Special Assistant to The Attorney

[Seal]

General.

/s/ EMILY CORBETT

PRIEST RAPIDS IRRIGATION
DISTRICT, a corporation.

By R. S. REIERSON,

Secretary.

State of Washington,
County of Yakima—ss.

Emily Corbett, being first duly sworn, on oath deposes and says: That she is the defendant above named; that she has read the foregoing stipulation, knows the contents thereof, and that the statements therein contained are true and correct.

/s/ EMILY CORBETT,

Subscribed and sworn to before me this 23 day of Sept., 1944.

[Seal] LIONEL PUGMIRE,

Notary Public in and for the State of Washington, residing at Yakima. My commission expires March 8, 1948.

State of Washington,
County of Yakima—ss.

R. S. Reiersen, being first duly sworn, on oath deposes and says: That he is the Secretary of the defendant, Priest Rapids Irrigation District, a municipal corporation of the State of Washington, and that he has been duly authorized by proper resolution of said corporation, adopted on the 6th day of Sept., 1944, to execute the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; that he has read the foregoing instrument, and that the statements contained therein are true, as he verily believes, and further, that the seal affixed thereto is the corporate seal of said corporation.

[Seal] R. S. REIERSON.

Subscribed and sworn to before me this 8th day of Sept., 1944.

[Seal] JUNE FOWLES,

Notary Public in and for the State of Washington, residing at Olympia. My Commission expires Jan. 6, 1945.

Filed Sept. 29, 1944. [129]

[Title of District Court and Cause.]

JUDGMENT ORDERING PAYMENT
OF BONDS

This cause coming on for hearing this day upon stipulation of the United States of America, Emily Corbett and Priest Rapids Irrigation District, a corporation, stipulating defendants herein; wherein it is stipulated and agreed that the stipulating defendant, Emily Corbett, is the owner and holder of three (3) five per cent (5%) bonds of the said Priest Rapids Irrigation District, a corporation, of the par value of One Thousand and no/100 Dollars (\$1000.00) each and that the payment to Emily Corbett of the sum of Three Thousand Seventy Five (\$3,075.00) by the United States of America, petitioner herein, shall be in full and complete payment and satisfaction of all of said bonds together with all of the interest due or to become due thereon and of the indebtedness videdenced therefrom and of any and all claims of Emily Corbett by reason of her ownership of said bonds; and

It further appearing from said stipulation that upon delivery of all said bonds to the Clerk of the Court that the sum of Three Thousand Seventy Five and no/100 Dollars (\$3,075.00) shall forthwith be paid to Emily Corbett out of the funds heretofore deposited in the registry of the Clerk of this Court by petitioner [130] in this Docket; and

It further appearing from said stipulation that the defendant, Priest Rapids Irrigation District, a corporation, joined in said stipulation solely for the purpose of agreeing to the payment of said bonds and the correctness of the amount due thereon, without prejudice to any right it may otherwise have to contest the amount of just compensation to be paid for the taking of the lands and facilities described in the Amended-Complaint on file in this action, and the Court being fully advised;

It is ordered, adjudged and decreed that the defendant, Emily Corbett, shall forthwith deliver to the Clerk of this Court all of said bonds held by it in the Priest Rapids Irrigation District; and

It is further ordered, adjudged and decreed that upon the receipt of said bonds the Clerk of this Court is hereby ordered and directed to pay to the defendant, Emily Corbett, 2401 West Yakima Avenue, Yakima, Washington, the sum of Three Thousand Seventy Five and no/100 Dollars (\$3,075.00) from the sum on deposit in Docket 128-99; and

It is further ordered, adjudged and decreed that upon final payment therefor, said bonds, be and they are hereby ordered cancelled, and the Clerk of this

Court is hereby and ordered and directed to mark each and every one of said bonds with the word "paid" upon the face thereof by perforation or other plainly legible means, and inform the Treasurer of Benton County, Washington, as ex-officio Treasurer of the defendant, Priest Rapids Irrigation District, a corporation, of such action and that the records of said County Treasurer be made to conform to such cancellation; and

It is further ordered, adjudged and decreed that the Court [131] retain jurisdiction of this proceeding for the purposes of making such further orders, judgment, and decrees as may be necessary.

Dated this 29 day of September, 1944.

L. B. SCHWELLENBACH,
United States District Judge.

Presented by:

RAYMOND G. BROWN,
Special Attorney,
Department of Justice.

Filed Sept. 29, 1944. [132]

In the District Court of the United States for
the Eastern District of Washington, Southern
Division

No. 128-99

UNITED STATES OF AMERICA,

Petitioner,

vs.

CLEMENTS P. ALBERT, and PRIEST RAPIDS
IRRIGATION DISTRICT, a municipal cor-
poration of the State of Washington, et al.,
Defendants.

ANSWER TO AMENDED PETITION FOR
CONDEMNATION AND PETITION FOR
PAYMENT OF COMPENSATION

Comes now the Priest Rapids Irrigation District,
a municipal corporation, and answering the
amended petition for condemnation as to Parcel Tr.
1 to Parcel Tr. 5, inclusive, Admits, denies and
alleges as follows:

I.

Answering Paragraph III of said petition, this
defendant denies the same, and the whole thereof.

II.

Answering Paragraph IV of said amended peti-
tion, this defendant denies the same, and the whole
thereof.

III.

Answering Paragraph V of said petition, this defendant admits the same.

IV.

Answering Paragraph VI of said petition, this defendant denies the same, and the whole thereof, and by reference incorporates herein and makes a part hereof the petition hereinafter set forth and the whole thereof.

And for further answer and by way of cross complaint, and petition for payment of compensation and distribution thereof Priest Rapids Irrigation District, a corporation, one of the defendants herein, alleges: [133]

I.

The Priest Rapids Irrigation District is and at all times herein mentioned was a Washington corporation, organized and existing under and pursuant to the laws of the State of Washington, particularly the Act of March 20, 1890, entitled "An Act providing for the organization and the governing of irrigation districts and the sale of bonds arising therefrom and declaring an emergency," and also acts amendatory thereof and supplemental thereto.

II.

That this defendant was organized for the purposes set forth and declared in the aforesaid acts of the Legislature and has heretofore exercised all the powers and functions given and granted to irrigation districts thereby.

III.

That in carrying out the purposes for which it was organized and performing the functions of an irrigation district, the defendant Priest Rapids Irrigation District acquired title to real property, certain existing irrigation works and facilities and constructed other facilities for the purpose of enabling it to furnish water to lands within the district. That in the course of its operations, assessments were levied against various parcels of land in the district, which assessments were not paid and through foreclosure proceedings pursuant to the aforesaid acts of the Legislature, and district acquired title to numerous parcels of land previously held in private ownership, and that the district continued to own said real and personal property and to operate the district facilities as an operating district until on or about the 23rd day of February, 1943.

IV.

That prior to said date, to-wit, February 23, 1943, numerous persons had acquired title to real property within the boundaries of the district, received water furnished by the [134] irrigation district, constructed the necessary distribution facilities for the distribution of water upon the land and thereby developed numerous privately owned parcels of land within the district served entirely by the facilities owned and operated by the defendant district.

V.

That in carrying out and performing the foregoing purposes for which it was organized in the manner aforesaid, the defendant Priest Rapids Irrigation District had on February 23, 1943, acquired and then owned and held title to certain real and personal property which, together with the value thereof, was as follows, or is described as follows:

Designation	Feature	Total Values
A	Power Canal	\$ 153,200
B	Generating Plant—Structures	149,900
C	Generating Plant—Equipment	121,500
D	Coyote Pumping Station—Structures	39,900
E	Coyote Pumping Station—Equipment.....	59,270
F	Transformers and Switches	30,700
G	Transmission Line.....	79,900
H	Main Irrigation Canal.....	74,000
I	Lateral System.....	9,700
J	Misc. Property	1,790
K	Future Development Expense.....	3,800
L	Water and Power Rights	337,025
Total.....		\$1,060,685

VI.

That on February 23, 1943, an order was entered by this court in the above entitled proceeding, a true and correct copy of which order is attached hereto marked "Exhibit A," and made a part hereof and that as a result of said order and immediately thereafter, and in order to accomplished the purposes for which said order was entered, the petitioner United States of America took possession of all the property of this defendant except its power plant, power canal and transmission lines.

VII.

That possession of the transmission lines was taken on July 30 and August 3, 1943, and the pumping plant on April 17, 1943, and possession of the power plant [135] and canal were taken from this defendant on or about the 1st day of October 1943, at 12 noon.

VIII.

That the entry of said order on February 23, 1943 and the taking possession of the property of the defendant district rendered the district wholly incapable of carrying out and performing in any degree whatsoever the purposes for which it was organized, and that because of the acts of the petitioner the defendant Priest Rapids Irrigation District was compelled to wholly discontinue and cease operations; that such effect upon the district will be permanent and that because thereof it will be wholly impossible for the district at any time in the future to perform any of its functions as an irrigation district and as a result thereof all landowners in the district have been wholly deprived of the uses and benefits for which the defendant district was organized and established.

IX.

That this defendant prior to February 23, 1943, held the naked legal title to the district property as trustee for the landowners entitled to receive water from the district and this defendant, Priest Rapids Irrigation District, now alleges that the owners of land so entitled to receive water were then the equitable owners of the district property and became

the legal owners thereof when the district was compelled to cease functioning as such and are now entitled to receive and to have distributed to them all compensation which the court shall award to the owners of the district assets.

X.

Your petitioner further alleges that a landowner or landowners representative of the various classes of land and rights in the district should be made a party or parties to this proceeding as representative of himself and of others similarly situated [136] for the purpose of determining the right of each and every landowner in the district as of February 23, 1943, to share in the assets of the district represented by the compensation to be awarded in this proceeding as the same shall be finally determined in this action on the basis of the ratio of the acreage held by each landowner to the total acreage in the district in private ownership on February 23, 1943.

XI.

That the sum of \$1,060,685.00 is the just compensation which should be awarded to this defendant in this proceeding, and that an order should be entered herein directing that upon the crediting of the amount heretofore paid by the petitioner on the bonds of this defendant, the balance of said just compensation should be paid over to this defendant as trustee, and that it be authorized to divide the same among the property owners as of February 23, 1943, on the basis of acreage as above set forth.

Wherefore, defendant prays that an order be entered authorizing and directing the landowner representative of other landowners be joined as a defendant in this action and that in this proceeding an order be entered directing that the valuation as ultimately determined in this action be paid to the Priest Rapids Irrigation District as trustee for the use and benefit of all property owners in the district as of February 32, 1943, and for such other and further relief as to the Court may seem just and equitable in the premises.

MOULTON & POWELL,
Attorneys for defendant
Priest Rapids Irrigation
District.

State of Washington,
County of Yakima—ss.

B. Salvini, being first duly sworn, on oath deposes and says: That he is President of the Board of Directors of Priest Rapids Irrigation District, that he has read the foregoing Answer, knows the contents thereof, and the same is true, as he verily believes.

B. SALVINI.

Subscribed and sworn to before me this 9th day of January, 1945.

CHARLES L. POWELL,
Notary Public in and for the
State of Washington,
Residing at Kennewick.

EXHIBIT "A"

In the District Court of the United States for the
Eastern District of Washington, Southern
Division.

No. 128

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS,

Defendant.

ORDER GRANTING RIGHT OF
IMMEDIATE POSSESSION.

This matter having come on regularly this day upon petitioner's motion and affidavit for right of immediate possession and it appearing therefrom that the property described in the petition for condemnation is being acquired in time of war for military, naval, or other war purposes and that immediate possession thereof to the extent of the interest hereinafter described is required in order that said property may forthwith be occupied, used and improved for the purpose described in said petition and as provided in Title II, Section 201 of the "Second War Powers Act, 1942," being Public No. 507, 77th Congress, approved March 27, 1942, now, therefore, it is hereby

Ordered that the right of immediate possession is hereby granted to the petitioner herein, the United States of America, of the property hereinafter de-

scribed. It is further ordered that when the names and addresses of record owners and parties in possession are obtained, notice of the entry of this order shall be given to record owners and to any person who is, on this day, actually occupying or cultivating said described lands, such notice to be given by depositing certified copies hereof in the United States registered mail in envelopes addressed to each such person; provided, that when the person so to be notified are husband and wife, one such notice addressed jointly to both shall be sufficient.

Said property is described as follows, to-wit:

The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines, in and to the following described lands, to wit: [139]

Area "A"

Beginning at the intersection of the East line of Section 31, T. 13 N. R. 28 E., with the Southerly or right bank of the Columbia River; thence

Meandering in a Northwesterly direction along the south Bank of the Columbia River to its intersection with the North-South center line of Sec. 4 T. 13 N. R. 25 E.; thence;

In a Southerly direction along the North-South center line of Secs. 4, 9, 16, and 21 to the S $\frac{1}{4}$ corner of Sec. 21; thence;

East along the South line of Sec. 21 to its Southeast corner; thence;

South along the West line of Sec. 27 and 34 to the

Southwest corner of Sec. 34; T. 13 N. R. 25 E.; thence;

East along the North line of Sec. 4, T. 12 N. R. 25 E. to the Northeast corner of Sec. 4; thence;

South along the West line of Secs. 3, 10, 15, 22, 27 to the Southwest corner of Sec. 27; thence;

East along the South line of Secs. 27 and 26 to the Southeast corner of Sec. 26; thence;

South along the West line of Sec. 36 to its Southwest corner; thence;

East along the South line of Sec. 36, T. 12 N., R. 25 E. and Sec. 31, T. 12 N. R. 26 E., to the Southeast corner of Sec. 31, thence;

South along the West line of Sec. 5, T. 11 N. R. 26 E., to its Southwest corner; thence;

East along the South line of Sec. 5 and 4 to the Southeast corner of Sec. 4; thence;

South along the West line of Sec. 10 to its Southwest corner; thence;

East along the South line of Secs. 10 and 11 to the Southeast corner of Sec. 11; thence;

North along the East line of Sec. 11 to its Northeast corner; thence;

East along the South line of Sec. 1 to its Southeast corner; thence;

North along the East line of Sec. 1 to its Northeast corner; thence;

East along the South line of Sec. 31, T. 12 N. R. 27 E. to the Southeast corner of Sec. 31; thence;

North along the East line of Sec. 31 to its Northeast corner; thence;

East along the South line of Sec. 29 to its Southeast corner; thence;

North along the East line of Sec. 29 to its Northeast corner; thence;

East along the South line of Sec. 21 to its Southeast corner; thence;

North along the East line of Sec. 21 to its Northeast corner; thence;

East along the South line of Sec. 15 to its Southeast corner; thence;

North along the East line of Sec. 15 to its Northeast corner; thence;

East along the South line of Sec. 11 to its Southeast corner; thence;

North along the East line of Sec. 11 to its Northeast corner; thence;

East along the South line of Sec. 1, T. 12 N. R. 27 E. and Sec. 6, T. 12 N., R. 28 E., to the Southeast corner of Sec. 6; thence;

North along the East line of Sec. 6, T. 12 N., R. 28 E., and Sec. 31, T. 13 N., R. 28 E. to its intersection with the Southerly bank of the Columbia River to the point of beginning.

Said lands are situate in Benton County, Washington, and contain 176,323 acres, more or less.

Area "D"

Beginning at the intersection of the North line of Section 2, Township 10 North, Range 28 East, West Meridian with the Westerly or right bank of the Columbia River; thence in a Southerly direc-

tion meandering along the right bank of the Columbia River to its intersection with the South line of Section 20, Township 9 North, Range 29 East; thence West along the South line of Sections 20 and 19, Township 9 North, Range 29 East and Sections 24 and 23, Township 9 North, Range 28 East to the Southwest corner of Section 23; thence North along the West line of Section 23 to its Northwest corner; thence West along the South line of Section 15 and 16 to the Southwest corner of Section 16; thence North along the West line of Sections 16, 9 and 4, Township 9 North, Range 28 East, and Sections 33, 28, 21, 16, 9 and 4, Township 10 North, Range 28 East to the Northwest corner of Section 4; thence East along the North line of Sections 4, 3 and 2 to the point of beginning.

Said land contains 17,510 acres, more or less, and is situate in Benton County, Washington.

Dated this 23rd day of February, 1943.

L. B. SCHWELLENBACH,
United States District Judge.

Presented by:

HART SNYDER,
Special Attorney for the
Department of Justice.

Filed February 12, 1945.

In the District Court of the United States for the
Eastern District of Washington, Southern
Division.

No. 128-99

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS; PRIEST RAPIDS
IRRIGATION DISTRICT, a municipal cor-
poration of the State of Washington, et al.,
Defendants.

DEMURRER TO ANSWER AND CROSS-COM-
PLAINT OF PRIEST RAPIDS IRRIGA-
TION DISTRICT AS TO PARCEL PR-1,
TRACT NO. W-2004, PARCEL PR-2, PAR-
CEL PR-3, TRACT NO. 6-452, PARCEL
PR-4, PARCEL PR-5.

Comes now the petitioner, by its undersigned at-
torneys of record, and demurs to the answer and
cross-complaint of Priest Rapids Irrigation Dis-
trict, a municipal corporation of the State of Wash-
ington, and this demurrer is made separately and
severally as to each paragraph, matter, and allega-
tion thereof, on the grounds and for the reasons as
follows, to-wit:

1. That said defendant has no legal capacity to
answer or sue.

2. That there is a defect of parties defendant.
3. That said cross-complaint does not state facts sufficient to constitute a cause of action.

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

FRANK B. REID,
Special Attorney,
Department of Justice.

EDWARD M. CONNELLY,
United States Attorney.

[Endorsed]: Filed April 25, 1945. [142]

In the District Court of the United States for the
Eastern District of Washington, Southern
Division.

No. 128-100

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS; RICHLAND IRRIGATION DISTRICT, a corporation of the
State of Washington, et al., STATE OF
WASHINGTON, et al.,

Defendants.

and

No. 128-99

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS; PRIEST RAPIDS IRRIGATION DISTRICT, a municipal corporation of the State of Washington, et al.,

Defendants.

MEMORANDUM OF THE COURT

These two Irrigation Districts have set up in their answers allegations which raise the issue as to the right to compensation for the assets owned by the Districts. To each affirmative answer, the petitioner has interposed a demurrer. The demurrer in each case is identical.

The petitioner first contends that the persons signing the answers are no longer qualified so to sign

because the Irrigation Districts have been out of business for three years and held no elections. Assuming *arguendo* the correctness of petitioner's contention, this does not mean that the property owners within the District are not entitled to defend this action. It is agreed by the counsel that, under the Washington Statutes and Decisions, an irrigation district holds legal title to the property owned by the District, which title it holds in trust for the owners of land within the District who have a beneficial interest. The situation parallels that presented in *State ex-rel Pryor vs. Paul*, 5 Wash. 2d 90. In that case, the Horse Heaven Irrigation District had been dissolved through the statutory process. It owned a considerable amount of property. The Supreme Court approved the action of trial court in appointing [143] the directors of the District to proceed as Trustees for the creditors and property holders of the District and account for the property and money to the Court. It is elementary that a trust will not fail for the lack of a trustee so that, even if we assume that the State Statute controlling the distribution of assets upon the dissolution of an irrigation district is deficient, the Court would have not only the right but the duty to appoint a trustee or trustees to represent the beneficiaries or land-owners whose property has been taken.

I see no merit in petitioner's second contention that there is a defect of parties defendant. The petitioners selected the parties defendant. This is the first time in my experience that I have heard of a plaintiff complaining that the defendants of its choice were not proper.

The petitioner's third attack upon the affirmative answers is that they fail to state facts sufficient to constitute a defense. I have considered all of the cases cited by counsel on both sides. My failure to discuss them in no way indicates lack of consideration of them. The fact, however, is that we have presented here an anomalous situation in which very little benefit can be derived from other cases. These irrigation districts, on February 23, 1943, owned certain assets. They held such assets in trust for the landowners. On that date, an order for immediate possession of all the property of the Districts and within the Districts was signed. From time to time thereafter, declarations of taking were filed covering various tracts within the Districts. After legal title to all the land in the Districts had been acquired by the petitioner, the property involved here was taken by the Government by filing declarations of taking. It seems to me it would be grossly unfair, if these landowners owned a beneficial interest in the District property, to deprive them of their opportunity for compensation for such property simply because the Government chose to take their land before it took the legal title which the Districts held in trust for the owners of the land. To reach such a conclusion would do violence to my conception of the obligation which the Government owes to its citizens whose property it takes. The Government had the power to control the litigation. The landowner was afforded no choice. For the Government to seek to exercise its power to the [144] substantial disadvantage of the landowner is unjust, inequitable and

improper. I know that a legal argument can be made to the contrary. Such argument can be buttressed by well-considered opinions of the appellate courts. Viewed as a whole, however, it must be admitted that the Government never tried to do this before and that there is no case which covers the situation presented here.

The fact that most of these cases involving the lands themselves have been tried should not prevent the landowners from receiving that to which they are entitled out to the Districts' assets on the theory that a condemnation case can only be tried once and that, in these proceedings, the landowners are attempting to take a second bite at the apple. The fact is that, in the first case which was tried, the landowner attempted to assert his claim to his proportionate share in the District's assets, the petitioner objected and I rule against the landowner. The basis of this ruling was that in the trial for the purpose of determining the compensation to be paid for a separate tract, there was no room to try out also the value of that landowner's proportionate share of the District assets. He was not the owner of the legal title to the District assets. He had no right to assert a direct claim to his proportionate share. Furthermore, as a matter of procedure, if I had permitted each landowner to assert his claim in each separate trial, it would have resulted in chaos and interminable delay as a consequence of which this cases never would have been completed. Imagine the situation in each case of having the voluminous testimony as to the value of District

assets presented to each separate jury. Furthermore, it would have resulted in an absurd situation because the landowner in one case would have a jury fixing one value upon the District's assets and then the jury in the next case might place an entirely different value upon the District's assets. The awkwardness and the confusion which would have resulted was realized by counsel on both sides and dozens of cases have been tried since with the understanding that, at some time, the question of the right of the landowners to their proportionate share of the value of the District assets would be thrashed out.

On the other hand, the landowners are not entitled to compensation for that portion of the District assets which was valuable only for irrigation [145] purposes. In each one of the trials and in all of the appraisals, the value of the separate tracts was based upon the proposition that they were within the irrigation district and had irrigation water available. Verdicts and settlements which have been made in these cases have been substantial. They have been based upon the land valued as irrigated land. For the owner of the lands now to receive compensation for the District assets which were devoted to irrigation purposes would amount to double compensation. Furthermore, the Government has paid out to the holders of the bonds in the Priest Rapids Irrigation District \$170,500.00. It has paid out to the holders of the bonds of the Richland Irrigation District \$97,000. Clearly it is entitled to offset the amount thus paid out against

any claim for compensation for the District assets.

It seems to me that what must be done in this case is that the Districts set up in their answers their contention as to the value of that portion of the assets in each instance which is not applicable to irrigation purposes and make claim for that amount after giving credit for the sums the petitioner expended in the payment of District obligations. While some difficulty may be encountered in making such allocation, I am sure it is not insuperable. I had personal experience in working out the formula for the allocation as to power and flood control and navigation on the Bonneville Dam. I know that a similar formula was worked out as between power and reclamation on the Grand Coulee Dam. While I do not attempt now to decide the question, I am frank to say, as I look at the answer of the defendant Richland Irrigation District, I do not see how it can be entitled to any compensation. It was exclusively an irrigation district and its assets were exclusively used for irrigation purposes. Any assets listed which were not so used were more than covered by the \$97,000 which the petitioner paid. On the other hand, the Priest Rapids District, according to its answer, owned non-irrigation assets valued substantially in excess of the amount of the bond money paid on its behalf.

I will sustain the demurrer to each affirmative defense granting to the defendants, however, the right to file a second amended answer embracing the theory heretofore outlined by me. The prayers in the answers should also include the request that the Court appoint some person or persons as trus-

tees to [146] liquidate the assets of the Districts and account for the money received to the Court for distribution to those entitled to such money.

L. B. SCHWELLENBACH,

United States District Judge.

CC: to B. H. Ramsey, Special Assistant to the Attorney General, 520 Miller Building, Yakima, Washington; and to Messrs. Moulton & Powell. Attorneys at Law, Kennewick, Washington, this 21st day of June, 1945. ECL Dep. Clerk.

Filed June 21, 1945.

In the District Court of the United States for the Eastern District of Washington, Southern Division.

No. 128-99

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS, et al.;

PRIEST RAPIDS IRRIGATION DISTRICT, a municipal corporation of the State of Washington,

Defendants.

ORDER SUSTAINING DEMURRER

W-2004

This matter coming on for hearing upon the demurrer of the petitioner to the affirmative answer

of the defendants, and after hearing said demurrer and the argument of counsel in support thereof, and being fully advised in the premises,

It is hereby ordered that the said demurrer be and the same is hereby sustained and the defendants are granted the right to file a second amended answer herein.

Done in open Court this 25 day of June, 1945.

L. B. SCHWELLENBACH,
United States District Judge.

Presented by:

JOSEPH L. THOMAS,
Special Attorney for the De-
partment of Justice.

Filed June 25, 1945. [147]

[Title of District Court and Cause.]

FIRST AMENDED ANSWER AND PETITION
FOR PAYMENT OF COMPENSATION

Comes now the Priest Rapids Irrigation District, a municipal corporation, and answering the amended petition for condemnation as to Parcel Tr. 1 to Parcel Tr. 5, inclusive, admits, denies and alleges as follows:

I.

Answering Paragraph III of said petition, this defendant denies the same, and the whole thereof.

II.

Answering Paragraph IV of said amended petition, this defendant denies the same, and the whole thereof.

III.

Answering Paragraph V of said petition, this defendant admits the same.

IV.

Answering Paragraph VI of said petition, this defendant denies the same, and the whole thereof, and by reference incorporates herein and makes a part thereof, the petition hereinafter set forth and the whole thereof.

And for further answer and by way of cross complaint and petition for payment of compensation and distribution thereof, Priest Rapids Irrigation District, a corporation, one of the defendants herein, alleges: [148]

I.

That Priest Rapids Irrigation District is and at all times herein mentioned was a Washington corporation, organized and existing under and pursuant to the laws of the State of Washington, particularly the Act of March 02, 1890, entitled "An Act providing for the organization and the governing of irrigation districts and the sale of bonds arising therefrom and declaring an emergency", and also acts amendatory thereof and supplemental thereto.

II.

That this defendant was organized for the purposes set forth and declared in the aforesaid acts of the Legislature and has heretofore exercised all the powers and functions given and granted to irrigation districts thereby.

III.

That in carrying out the purposes for which it was organized and performing the functions of an irrigation district, the defendant Priest Rapids Irrigation District acquired title to real and personal property and certain existing irrigation works and facilities and constructed other facilities for the purpose of enabling it to furnish water to lands within the district. That in addition to other properties used exclusively for irrigation purposes this defendant acquired title to one hydro-electric power plant at Priest Rapids on the Columbia River, together with all water rights, transmission lines and generating equipment. That in the course of its operations, assessments were levied against various parcels of land in the district, which assessments were not paid, and through foreclosure proceedings pursuant to the aforesaid acts of the Legislature, the district acquired title to numerous parcels of land previously held in private ownership, and that the district continued to own said real and personal property and to operate the district facilities as an operating district until on or about the 23rd day of February, 1943. [149]

IV.

That prior to said date, to-wit, February 23, 1943, numerous persons had acquired title to real property within the boundaries of the district, received water furnished by the irrigation district, constructed the necessary distribution facilities for the distribution of water upon the land and thereby developed numerous privately owned parcels of land within the district served entirely by the facilities owned and operated by the defendant district.

V.

That in carrying out and performing the foregoing purposes this defendant, Priest Rapids Irrigation District, on February 23, 1943, had acquired title to certain property not used exclusively in the delivery of irrigation water to property within the district. That said properties and the values thereof as of the date possession was taken from this defendant are as follows:

Designation	Feature	Values
A	Power Canal	\$153,200.00
B	Generating Plant—Structures	149,900.00
C	Generating Plant—Equipment	121,500.00
D	Transformers and Switches	30,700.00
E	Transmission Lines	79,900.00
F	Miscellaneous Property.....	1,790.00
G	Future Development Expense.....	3,800.00
H	Water and Power Rights	307,025.00
Total.....		<hr/> \$847,815.00

VI.

That on February 23, 1943, an order was entered by this Court in the above entitled proceeding, a true and correct copy of which order is attached to this defendant's original answer marked "Exhibit A", and made a part hereof, and that as a result of said order and immediately thereafter, and in order to accomplish the purposes for which said order was entered, the petitioner, United States of America, took possession of all the property of this defendant except its power plant, power canal and transmission lines. [150]

VII.

That possession of the transmission lines, power plant and canal were taken from this defendant on or about the 1st day of October, 1943, at 12 noon.

VIII.

That the entry of said order on February 23, 1943, and the taking possession of the property of the defendant district rendered the district wholly incapable of carrying out and performing in any degree whatsoever the purposes for which it was organized, and that because of the acts of the petitioner the defendant Priest Rapids Irrigation District was compelled to wholly discontinue and cease operations; that such effect upon the district will be permanent and that because thereof it will be wholly impossible for the district at any time in the future to perform any of its functions as an irriga-

tion district, and as a result thereof all landowners in the district have been wholly deprived of the uses and benefits for which the defendant district was organized and established and of their interest in the property of the district.

IX.

That this defendant prior to February 23, 1943, held the naked legal title to all the district property as trustee for the landowners entitled to receive water from the district and this defendant, Priest Rapids Irrigation District, now alleges that the owners of land within the district were the equitable owners of all the district property when the district was compelled to cease functioning as such, and are now entitled to receive and to have distributed to them all compensation which shall be awarded as just compensation for the taking of the district assets.

X.

That this defendant is duly organized and existing irrigation district under the laws of the State of Washington, and its affairs are administered by B. Salvini and J. H. Evett as duly elected and qualified directors, and R. S. Reiersen as its duly appointed and qualified secretary. That they are charged under the law with accounting for all monies received as such officers, [151] and paying the same to the County Treasurer of Benton County. That the values of the assets above described should be determined by a trial before a jury and just compensation for the taking of the same thereby determined

and that payment thereof should be made to Priest Rapids Irrigation District through the County Treasurer of Benton County, Washington. That when said payment is made the defendant may then pay the assets to the persons entitled thereto in liquidation proceedings instituted in the Superior Court of the State of Washington. That this defendant alleges that the persons entitled to said assets are the legal owners of the real property within the district as of February 23, 1943.

XI.

That in the alternative and only in the event this court should deny the right of the Priest Rapids Irrigation District to collect the just compensation for the property above described, then the Court should appoint B. Salvini, J. H. Evett and R. S. Reiersen as trustees to liquidate the assets of the district, to have the just compensation determined for the taking of the assets of the district and to collect the same and pay and distribute the assets to the persons who were landowners on February 23, 1943, on the basis of the ratio of the acreage held by each landowner to the total acreage in private ownership on said last named date.

XII.

That \$847,815.00 is the fair value and the just compensation which should be awarded to this defendant in this proceeding for the taking of the items of property from the defendant above described.

And for further answer and by way of Second cause of action to its cross-complaint and petition for payment of compensation, this defendant alleges: [152]

I.

This defendant repeats the allegations of paragraphs I to XII, inclusive, of its first cause of action and makes them a part hereof the same as is set forth at length herein.

II.

That in addition to the items of property not used exclusively for irrigation purposes and described in paragraph V of the first cause of action in this complaint and petition for compensation, this defendant on February 23, 1943, owned the following described assets used in the operation of its irrigation system:

(a) Coyote Pumping station structure	\$ 39,900.00
(b) Coyote Pumping station equipment.....	59,270.00
(c) Main irrigation system.....	74,000.00
(d) Lateral system	9,700.00
<hr/>	
Total.....	\$182,870.00

III.

That heretofore the petitioner, United States of America, has paid and discharged the bonded indebtedness of this defendant in the sum of \$170,500.00. That said bonded indebtedness was a lien on the irrigation assets last above described, which lien is created by statute and that the said irrigation assets should be valued in this proceeding and the value thereof off-set against the bonded indebtedness

heretofore paid by the said petitioner and the balance thereof distributed to the legal owners of the real property in the district as of February 23, 1943.

Wherefore, this defendant prays:

(a) That the just compensation for the taking of the property of this defendant be determined before a jury and that the amount awarded be paid to this defendant to be distributed by it pursuant to liquidation proceedings in the State Court, or

(b) In the alternative, and only in the event the right of this defendant to receive such award should be denied, that B. Salvini, J. H. Evett and R. S. Reiersen be appointed trustees to conduct these proceedings to determine just compensation, to liquidate the assets of said district and to pay and distribute the same to the landowners as of February 23, 1943, under the supervision of the Court.

(c) For such other and further relief as the Court shall deem just and equitable.

MOULTON & POWELL,

Attorneys for Defendant

Priest Rapids Irrigation

District. [154]

State of Washington,
County of Yakima—ss.

R. S. Reiersen, being first duly sworn, on oath deposes and says: That he is secretary of the Board of Directors of Priest Rapids Irrigation District, that he has read the foregoing First Amended An-

swer and Petition for Payment of Compensation, knows the contents thereof, and the same is true, as he verily believes.

/s/ R. S. REIERSON.

Subscribed and sworn to before me this 4th day of Sept. 1945.

/s/ H. L. TAYLOR,

Notary Public in and for the
State of Washington, Re-
siding at Yakima, Wash.

Filed: Sept. 21, 1945. [153]

[Title of District Court and Cause.]

**DEMURRER TO AMENDED ANSWER AND
PETITION OF PRIEST RAPIDS IRRIGA-
TION DISTRICT AS TO PARCEL PR-1,
TRACT NO. W-2004, PARCEL PR-2, PAR-
CEL PR-3, TRACT NO. G-452, PARCEL
PR-4, PARCEL PR-5.**

Comes now the petitioner, by its undersigned attorneys or record, and demurs to the answer and cross-complaint of Priest Rapids Irrigation District, a municipal corporation of the State of Washington, and this demurrer is made separately and severally as to each paragraph, matter, and allegation thereof, on the grounds and for the reason as follows, to-wit:

1. That said defendant has no legal capacity to answer or sue.
2. That there is a defect of parties defendant.

3. That said cross-complaint does not state facts sufficient to constitute a cause of action.

4. That a demurrer has heretofore been sustained in the above entitled proceeding to the answer and cross-complaint of the Priest Rapids Irrigation District, and that the amended answer alleges no new matters or things which would entitle it to the relief prayed for under the ruling of the Court on the demurrer to the answer and cross-complaint.

BERNARD H. RAMSEY,

Special Assistant to the
Attorney General.

ERNEST FALK,

Special Attorney,
Department of Justice.

EDWARD M. CONNELLY,

United States Attorney.

Filed: Oct. 24, 1945. [156]

[Title of District Court and Cause.]

PETITIONER'S POINTS AND AUTHORITIES
UPON DEMURRER TO AMENDED AN-
SWER AND PETITION OF PRIEST RAP-
IDS IRRIGATION DISTRICT AS TO PAR-
CEL PR-1, TRACT NO. W-2004, PARCEL
PR-2, PARCEL PR-3, TRACT NO. G-452,
PARCEL PR-4, PARCEL PR-5.

I.

That the defendant, Priest Rapids Irrigation Dis-
trict, has no legal capacity to answer or sue:

Points and Authorities

The last legally elected and qualified board of directors of said district, consisting of B. Salvini, R. S. Reiersen and J. H. Evett, are neither de jure nor de facto officers of said district. Section R-7421, P-3200 Washington Statute provides that following the organization election, an irrigation district shall hold an annual election on the second Tuesday of December for the purpose of electing a director, or directors where the board consists of more than three members, and that the term of each director shall be for the term of three years from and after the first Tuesday of January next succeeding his election. Said section further provides that in case of any vacancy occurring in the office of a director, such vacancy shall be filled by appointment by the board of county commissioners of the county in which the proceeding for the organization of the district were had. No elections have been held within the district since 1942 and that term for which B. Salvini was elected in 1942 expired in January, 1945; that R. S. Reiersen resigned as director of said district in February, 1944, and since said date has acted as the secretary of said district; that J. H. Evett was appointed in 1942 to fill out the unexpired [157] portion of Director Frank Clark's term and that this term has long since expired.

Said section does not provide that the duly elected and qualified members of the board of directors shall continue to hold office until their successors are elected and qualified save in organization elections

and in the case of appointment made by the board of county commissioners to fill a vacancy pending an election. On the other hand, the section does expressly provide as follows:

“In case of any vacancy occurring in the office of director, such vacancy shall be filled by appointment by the board of county commissioners——”

That it was the intent of the legislature that a duly elected member of the board shall not continue in office beyond his term time is evidenced by the following language appearing in said section:

“The failure on the part of any irrigation district in this State heretofore or hereafter to hold one or more annual elections for selection of officers or otherwise to provide officers for the district shall not for that reason dissolve the district or impair its powers where later officers for said district shall be appointed or elected and shall qualify as such and shall exercise and duties of their respective offices in the manner provided by law——”

It is a well-known rule of statutory construction that by expressly enumerating the method or manner of accomplishing a certain result, all other means or methods are by inference excluded. *Expressio unius est exclusio alterius*, applies.

Further, these men, and none of them, could in any event be *de facto* officers of the district because they lack the primary qualifications for holding any

district office. Section R-7421, P-3200 provides that the qualifications of the directors of an irrigation district shall be the same as the qualifications of the electors of the district, and Section R-7420, P-3199 further provides that at all times the majority of the board of directors shall be residents of the county or counties within which the district is situated. Section R-7420, P-3199 fixes the qualifications of an elector as follows:

“Any person of the age of twenty-one years being a citizen of the United States and a resident of the State of Washington, who holds title to land or evidence of title to land embraced within the boundaries of any irrigation district or proposed irrigation district, in the case of an election for organization thereof, shall be entitled to vote at any election held therein.” [158]

It appears, therefore, that in order to be an officer of an irrigation district, one must own land within the district, and the majority of the board of directors must be resident within the county in which the district is situated. Neither Mr. Salvini nor Mr. Evett own a single foot of land in the Priest Rapids Irrigation District. Mr. Salvini is a resident of Yakima County whereas the Priest Rapids Irrigation District is situated in Benton County. The following rule is laid down in *Corpus Juris*, Page 1313, Section 892:

“The officers of an irrigation district are public officers although they are not necessarily

State officers and they must possess the statutory qualifications such as residence or ownership of property in the district, etc.”

We find that at the time the answer and cross-complaint of the district was filed in this case, that the district was attempting to act by and through B. Salvini and J. H. Evett, representing themselves as the board of directors of said district and that no member of the so-called board of directors at said time owned a single foot of land within the district and that two-thirds of said board were not residents of Benton County, in which the district is situated. It follows that these men were neither *de jure* nor *de facto* officers of the district and could not at said time, *now now*, act for and on behalf of said district. The district was at the time the answer and cross-complaint was filed and is now without a legally constituted board of directors and has no legal capacity to answer or sue.

II.

That there is a defect of parties defendant:

Points and Authorities

As has already been pointed out under Paragraph I above, the Priest Rapids Irrigation District, since it has no duly constituted board of directors by and through which it may act, is without legal capacity to answer or sue.

Further, it appears that said district through its answer and cross-complaint is appearing solely on behalf of the former owners of lands within the district. No former owner appears in this proceed-

ing. The answer and cross-complaint alleges that the district never held any interest to the district property save the naked legal title and that it no longer holds the legal title. [159]

The district alleges that it is appearing solely on behalf and for the benefit of persons who own no lands within the district. Even if the district was appearing by and through a properly constituted board of directors, it is without statutory or any authority to appear on behalf of strangers to the district and against the owner of the lands within the district. The trusteeship imposed upon the district is for the sole benefit of the lands within the district and the owners thereof. A review of the record establishes that the petitioner is the sole owner of all lands within the district. The petitioner, United States of America, between February 23, 1943, and March 4, 1944, acquired all of the privately-owned lands within the district and thereby as sole owner of such lands became the sole beneficiary of the trust imposed upon the district. Thereafter, on May 12, 1944, the petitioner acquired the legal title to all properties to which legal title was held by the district by the filing of a declaration of taking. There was deposited in Court simultaneously therewith a sufficient sum of money to pay all of the obligations of said district and to relieve said properties of all liens created by said obligations. The district has no right to appear on behalf of and for the sole benefit of such prior owners of lands within the district as it may elect to represent.

In Re Horse Heaven Irrigation District 11,
Washington 2d, Page 218

As a matter of fact, there are no parties defendant appearing through the answer and cross-complaint herein:

III.

That said cross-complaint does not state facts sufficient to constitute a cause of action or cross-complaint:

Points and Authorities

It appears from the files and records in Civil No. 128, *United States vs. Alberts*, and in Civil Nos. 155, 152, 160 and 136, as well as in the allegations of the answer and cross-complaint herein, that the petitioner, *United States of America*, did acquire fee title to all lands within the irrigation district and thereby became the sole beneficiary as to all properties and facilities of the district subject only to the outstanding lien of the bonds and [160] other indebtedness of said district, leaving in the district as trustee for the sole use and benefit of the petitioner, *United States of America*, as the owner of the lands, the naked legal title to the district facilities and properties. That, thereafter, the petitioner, *United States of America*, acquired the naked legal title from the district and paid all bonded and other indebtedness of the district constituting a lien upon said properties. It is a well-established principal of law that:

“The estate of a trustee ceases to exist when the purposes of creation of a trust are satisfied.”

Standard Oil Company vs. Mehrtens 118 So., Page 216; Smith vs. Massachusetts Mutual Life Insurance Company 156 So., Page 498; 95 A.L.R., Page 508; Zelly vs. Zelly 136 Atlantic, Page 738.

Or, to use the language found in Brooklyn Trust Company vs. Lester 267 N.Y.S., Page 287.

“Powers in trust expire when the object of their creation fail or become impossible or unattainable.”

The rule is stated in Guarantee Trust Company of New York vs. Cutting 225 N.Y.S., Page 407, as follows:

“Trust terminates when beneficiary acquires present right to corpus as well as to entire income.”

The trusteeship of the district has terminated with the acquisition by the beneficiary, the United States of America, of the corpus. The purposes of the trust have been fully satisfied. The object of the powers of the trust have become impossible and unattainable. The district, admittedly, never held anything other than the naked legal title for the use and benefit of the owners of the land (the United States of America.) The acquisition of this naked legal title by the beneficiary certainly does not predicate a suit by the trustee to recover from the beneficiary for the benefit of third parties the value of the trust properties. The full beneficial use of those proper-

ties was already vested in the Government. The naked title was entirely without value in that it was without financial worth to the trustee and imposed upon the trustee certain continuing duties. Trusteeship had terminated by law. I know of no case where a trustee holding nothing but the naked legal title without any beneficial interest has ever been permitted to litigate with a beneficiary over the value of such naked legal title upon termination of the trusteeship. Such [161] procedure would be abhorrent to the entire theory of trusts. As has already been pointed out under Paragraph II above, the district does not seek here to litigate the value of the trust properties for its own benefit, but attempts to appear through the answer and cross-complaint on behalf of certain one-time owners of land within the district presumably upon the theory that these strangers to the trust are entitled to recover from the beneficiary of the trust the value of the district properties. No cause of action or suit is stated under the cross-complaint. The district is without legal capacity to sue. The suit is not actually a suit by the district at all, but is an attempt on the part of the district to appear on behalf of strangers to the trust. The district, as trustee, cannot in any event litigate with the beneficiary the value of properties in which the full beneficial use is already vested in the beneficiary simply because that by reason of the failure of the trust the trustee has been divested of the naked legal title and that title has been vested in the beneficiary.

IV.

That a demurrer has heretofore been sustained in the above entitled proceeding to the answer and cross-complaint of the Priest Rapids Irrigation District, and that the amended answer alleges no new matters or things which would entitle it to the relief prayed for under the ruling of the Court on the demurrer to the answer and cross-complaint.

Points and Authorities

The Priest Rapids Irrigation District, by its amended answer and petition under Paragraph 5 thereof, sets out what it designates as property not used exclusively in the delivery of irrigation water to property within the district, and then proceeds to list as such property the power canal, the generating plant structures, the generating plant equipment, the transformers, the switches, the transmission lines, and water and power rights, setting forth the value of these properties as in excess of \$800,000. The Priest Rapids Irrigation District is a pump irrigation district, all water for the irrigation of the 12,000 acres within the boundaries of the Priest Rapids Irrigation District is raised to the level of the main canals of the district by the pumping facilities of the district located at Coyote Rapids. These pumps are driven by [162] electricity. This electricity is generated in the power plant belonging to the district through the power generating facilities therein installed. The electricity is carried to the pumps through the transmission lines of the district

where it is utilized to pump the water from the Columbia River to the main canals of the district by which it is distributed to the lands within the district. It must be obvious that without the utilization of the power canal for the diversion of water, the generating plant with its equipment, transformers, switches, and transmission lines, that the Priest Rapids Irrigation District could not operate at all, and could not deliver water to the lands within its boundaries lying above the level of the Columbia River. So, too, with the water and power rights listed. All of its water, other than that used for the generation of power, is appurtenant to the lands within the district, and is required for the irrigation of those lands. The water used for the generation of power makes it possible to develop the power by means of which the water for irrigation is lifted from the Columbia River. The district, under its answer, is again attempting to do what the district attempted to do under its first answer, as pointed out by Judge Schwellenbach, "Receive compensation for the district assets which were devoted to irrigation purposes," and as Judge Schwellenbach further pointed out, "This would amount to double compensation." It is plain, I think, that the district has not attempted to follow the procedure suggested by Judge Schwellenbach, that is, set out that portion of the assets which is not applicable to irrigation purposes, and make claim for that sum less the sum expended by the Government in retiring the district obligations, to-wit: \$170,500. On the other hand, they have attempted to do by indirection what they

have been specifically warned they could not do directly: Claim compensation for assets devoted to irrigation purposes. The answer and petition is a bare-faced attempt to collect from the Government double compensation.

The procedure in this case was plainly set forth Judge Schwellenbach in his opinion sustaining the demurrer of the Government to the amended answer and petition of the Priest Rapids Irrigation District. Attention is called to the following portion of that opinion: [163]

“On the other hand, the landowners are not entitled to compensation for that portion of the District assets which was valuable only for irrigation purposes. In each one of the trials and in all of the appraisals, the value of the separate tracts was based upon the proposition that they were within the irrigation district and had irrigation water available. Verdicts and settlements which have been made in these cases have been substantial. They have been based upon the land valued as irrigated land. For the owners of those lands now to receive compensation for the District assets which were devoted to irrigation purposes would amount to double compensation. Furthermore, the Government has paid out to the holders of the bonds in the Priest Rapids Irrigation District \$170,500. It has paid out to the holders of the bonds of the Richland Irrigation District \$97,000. Clearly it is entitled to offset the amount thus paid out against any claim for compensation for the District assets.

“It seems to me that what must be done in this case is that the Districts set up in their answers their contention as to the value of that portion of the assets in each instance which is not applicable to irrigation purposes and make claim for that amount after giving credit for the sums the petitioner expended in the payment of District obligations. While some difficulty may be encountered in making such allocation, I am sure it is not insuperable. I had personal experience in working out the formula for the allocation as to power and flood control and navigation on the Bonneville Dam. I know that a similar formula was worked out as between power and reclamation in the Grand Coulee Dam.”

It is plainly evident, I think, that the district has elected to disregard the plain direction of the Court, and instead of setting out and claiming compensation for those assets which have no use in connection with irrigation, they have elected instead to list and claim compensation for assets primarily designed, acquired and utilized for irrigation by listing them as assets not used exclusively for irrigation. It is too plain to require argument that the

district is again attempting to claim double compensation for its assets in this proceeding.

Respectively submitted:

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

EARNEST FALK,
Special Attorney,
Department of Justice.

EDWARD M. CONNELLY,
United States Attorney.

Filed: Oct. 24, 1945. [164]

In the District Court of the United States for the
Eastern District of Washington, Southern
Division.

No. 128-99

UNITED STATES OF AMERICA,
Petitioner.

vs.

CLEMENTS P. ALBERTS, et al., and PRIEST
RAPIDS IRRIGATION DISTRICT,
Defendants.

C. I. WRIGHT and MAMIE WRIGHT, husband
and wife,
Intervenors.

MOTION FOR LEAVE TO INTERVENE

Come now, C. I. Wright and Mamie Wright, and
move the Court for an order authorizing and per-

mitting them to file the attached Complaint in Intervention in the above entitled action, and directing the nature of the process to be served on the petitioner herein.

This motion is based upon the records and files herein and the Complaint in Intervention attached hereto.

MOULTON & POWELL,
/s/ J. K. CHEADLE,
Attorneys for Interveners.

[Title of District Court and Cause.]

COMPLAINT IN INTERVENTION

Come now, C. I. Wright and Mamie Wright, husband and wife, and by leave of the court, file this their complaint in intervention herein, and for cause of intervention allege:

I.

That the interveners were on and prior to February 23, 1943, the owners of the following described real property, to-wit:

Southeast quarter of Southwest quarter of Southeast quarter, Section twenty-five (25), Township fourteen (14) North, Range twenty-six (26), East, Willamette Meridian, containing 10 acres.

II.

That said property was located within the Priest Rapids Irrigation District, subject to assessments for said district, received its irrigation water from

said irrigation district, and said property and the interveners, as owners of said property, were entitled to each and all of the benefits, as well as the burdens, of the laws of the State of Washington pertaining to irrigation districts under which the Priest Rapids Irrigation District was organized and operated.

III.

That the Priest Rapids Irrigation District did on February 23, 1943, have within its boundaries a total of 15,891.93 acres of land, of which 5,731.97 acres were owned by so-called private landowners such as interveners; that the balance was owned by said district; and that these interveners were therefore the owners of .174% of all the land in private ownership in said district as of said date. [166]

IV.

That on February 23, 1943, a condemnation proceeding, entitled United States of America, petitioner, vs. Clements P. Alberts, defendant, Civil No. 128, was commenced in the above-entitled court by the United States of America; and that in its petition for condemnation filed on said date and in the order of this court entered on the same date and granting to the United States of America the right of immediate possession, the property covered by said petition and order included the farm lands and other real properties and improvements owned by the Priest Rapids Irrigation District and included the lands of so-called private landowners in said district, including the land owned by the interveners and described in paragraph I hereof.

V.

That in April, 1943 and pursuant to said order of February 23, 1943, the petitioner, the United States of America, took possession of all the property of the Priest Rapids Irrigation District covered by said order, except said district's power plant, power canal and transmission lines; and that possession of said power plant, power canal and transmission lines was taken pursuant to said order on or about October 1, 1943.

VI.

That on or about Aug. 26, 1943, the United States of America filed in said Civil No. 128 an amended petition for condemnation, accompanied by a declaration of taking and a deposit paid into court, entitled United States of America, petitioner, vs. Clements P. Alberts, C. I. Wright and Mamie Wright, et al., defendants, and numbered Civil No. 128-; that said amended petition and declaration of taking covered said property of these interveners but did not cover any of said properties of said district; and that by the filing of said declaration of taking the petitioner took title to said property of interveners, which title was described in said amended petition and declaration of taking as follows:

“The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, for pipelines and for existing irrigation ditches, canals and laterals owned by the Priest Rapids Irrigation District.” [167]

VII.

That on or about October 15, 1943, compensation for the taking of interveners' said property was determined by a jury in said proceedings No. 128-43. That in the course of said proceeding, on October 12, 1943, interveners offered to prove the value of the properties of the Priest Rapids Irrigation District, which had been taken by the petitioner pursuant to said order of February 23, 1943, in order that interveners might have said value determined and their proportionate share thereof awarded in their jury trial; that the petitioner objected to said offer of proof; and that said objection was sustained and said offer rejected, as explained by this court, because in the trial for determining the compensation to be paid for interveners' said land, there was no room to try also the value of their proportionate share of said district's properties, also because interveners were not the owners of the legal title to said district's properties and because they had no right to assert a direct claim to their proportionate share, and also in order to avoid the chaos, awkwardness and confusion of numerous determinations by different juries of the value of said district's properties. That said jury trial with respect to the value of interveners' said property proceeded in accordance with said limitation on proof; and that the compensation award to interveners was exclusively for the real property of interveners as herein above described.

VIII.

That on October 8, 1943, in connection with this court's consideration of and ruling on a similar offer of proof in another proceeding in said Civil No. 128, counsel for petitioner stated in open court that petitioner was willing as part of the proceedings to have the record show that petitioner bound itself to make and file a declaration of taking covering the properties of the irrigation district involved, to which petitioner had obtained the immediate right of possession by the aforesaid order of February 23, 1943 and of which properties the petitioner took actual possession pursuant to said order; and that counsel for petitioner then further stated for the record in open court that said declaration of taking covering said district properties would be made "within the next few weeks." That proceedings against the farm tract [168] of interveners and against farm tracts of other private landowners in the Priest Rapids Irrigation District were conducted under said limitation on proof, in part because of said assurance given by petitioner in open court that petitioner would proceed expeditiously to file declarations of taking and have just compensation determined with respect to irrigation district properties.

IX.

That petitioner, notwithstanding the matters of court record set forth in the preceding paragraph hereof, delayed over six months in making said declarations of taking covering said district properties.

X.

That on April 24, 1944, in connection with other proceedings in said Civil No. 128, against farm tracts of private landowners in the Richland Irrigation District, this court gave notice to petitioner that unless petitioner promptly filed declarations of taking covering said district's properties, that court would change its ruling n the offer of proof made in said proceedings and allow private landowners of lands in said district to prove the value of their proportionate share in the Irrigation District and to submit testimony as to the value of the Irrigation District and to submit that issue to the jury.

XI.

That subsequent to and as a result of said notice given on April 24, 1944 by this court, the petitioner in May, 1944 filed an amended petition and declaration of taking, numbered Civil No. 128-99, covering the properties of the Priest Rapids Irrigation District; and that said district properties have been covered only by the original petitions in Civil No. 128, and by the amended petition and declaration of taking in Civil No. 128-99.

XII.

That petitioner by demurrer to the answer of the defendant Priest Rapids Irrigation District in said Civil No. 128-99 is contending and urging upon this court that said defendant district, named defendant by the petitioner, has no capacity to answer or de-

fend against the amended petition served on it by petitioner, and that the petitioner acquired from interveners and other similarly situated private landowners of property in said district full right, title and interest in and to all assets of said district, although in the proceedings in [169] Civil No. 128-43 in which petitioner acquired by condemnation the said land of interveners, there was not any proof of or compensation for the value of said district's properties, for the reasons set forth in paragraph VII hereof.

XIII.

That under the laws of the State of Washington legal title to irrigation district properties is vested in the district and such properties are held by the district in trust for the purposes of the irrigation district and for the benefit of the creditors and private landowners of the district; that said relationship of trustee and beneficiaries existed between the Priest Rapids Irrigation District and interveners on February 23, 1943 with regard to the properties of said district taken by petitioner's exercise of the power of eminent domain and that said relationship continues to exist with regard to the fund of just compensation for said properties; that said fund stands in the place of said properties and that petitioner, the condemner, has no interest in said fund.

XIV.

That just compensation for said district properties should be determined by a jury and be paid to

the defendant Priest Rapids Irrigation District to be held in trust and disposed of in accordance with the laws of the State of Washington, or alternatively, and in conformity with the law of the State of Washington, Remington's Revised Statutes, Title 6, Chapter 5, Section 930, that this court, after determination by a jury of the amount of just compensation, and payment thereof, should hold said compensation fund in the registry of this court, to be paid therefrom in accordance with the decree in an appropriate proceeding under the laws of the State of Washington for dissolution of the Priest Rapids Irrigation District and disposition of said fund which stands in the place of properties of said district, a municipal corporation of the State of Washington.

XV.

That interveners are entitled to intervention in this proceeding by reason of their said interest in said fund and their interest in the success of the defendant Priest Rapids Irrigation District. [170]

XVI.

That petitioner has taken by exercise of eminent domain said district's properties; that the Fifth Amendment of the Constitution of the United States of America requires that just compensation be paid by petitioner for said properties; and that the petitioner has sought and is seeking in the various parts of the condemnation proceeding Civil No. 128 to circumvent said constitutional requirement to the detriment of, and in violation of the constitutional

rights of, the Priest Rapids Irrigation District and the private landowners of property in said district on February 23, 1946, when petitioner exercised its power of eminent domain against the properties of said district.

XVII.

That petitioner has sought and is seeking to take said districts properties without a jury trial on the issue of the value thereof; and that petitioner thereby seeks to deny to said district, and to said private landowners of property therein on February 23, 1943, the due process of law guaranteed to them by the Fifth Amendment of the Constitution of the United States of America.

XVIII.

That this intervention is made by interveners for the benefit of themselves and all other persons similarly situated, more particularly each and every owner of land in private ownership within the Priest Rapids Irrigation District as of February 23, 1943.

Wherefore, interveners pray:

- (1) That the issue of just compensation for the taking of the properties of the Priest Rapids Irrigation District, covered by said order of February 23, 1943 and by the amended petition No 128-99, be determined by jury;
- (2) That the petitioner be held to have no right, title or interest in the fund of just compensation for said properties;

- (3) That said fund to be paid to the defendant Priest Rapids Irrigation District to be held in trust and disposed of in accordance with the laws of the State of Washington; or alternatively, that said fund to be held in the registry of [171] the above-entitled court, to be paid therefrom in accordance with the decree in an appropriate proceeding under the laws of the State of Washington for dissolution of the Priest Rapids Irrigation District and disposition of its assets.

MOULTON & POWELL,
/s/ J. K. CHEADLE,
Attorneys for Interveners.

State of Washington,
County of Yakima—ss.

C. I. Wright, being first duly sworn, deposes and says: That he is one of the interveners above named and makes this verification in behalf of himself and intervener Mamie Wright; that he has read the above and foregoing complaint and knows the contents thereof and believes the same to be true.

/s/ C. I. WRIGHT.

Subscribed and sworn to before me this 13th day of March, 1946.

[Seal] K. H. STONE,
Notary Public in and for the State of Washington,
residing in Sunnyside.

Filed: March 23, 1946. [172]

[Title of District Court and Cause.]

PETITION

Comes now the Priest Rapids Irrigation District and respectfully petitions the above entitled Court and shows:

I.

That there is paid into the Court in the above case as estimated just compensation for the taking of the property of this defendant the sum of \$170,500.00.

II.

That as provided in the amended petition for condemnation and in the declaration of taking and order thereon, the district was indebted by reason of bonds and warrants outstanding and general obligations represented by vouchers in a sum representing approximately the amount paid into Court as estimated just compensation.

III.

That all of the bonded indebtedness of this defendant has been paid and there are certain obligations of this defendant which must be paid.

IV.

That there remains in the registry of the above entitled Court the sum of \$650.00, which is a portion of the estimated just compensation paid into court, and that petitioner should be authorized to withdraw

said sum and the same should be paid to petitioner to use in liquidation of the indebtedness and in meeting current obligations. [173]

This petition should not be construed as an admission of the correctness of the estimated just compensation paid into court, but is solely for the purpose of withdrawing and making available to petitioner the amount paid into the registry of the above entitled Court as estimated just compensation. The petitioner reserves the right to contest the sufficiency of the estimated just compensation so paid and to trial by jury therefor.

Wherefore, your petitioner prays that an order be entered authorizing and directing that the Clerk of the above entitled Court pay to petitioner the sum of \$650.00, being the balance of the estimated just compensation paid into court in this action with the declaration of taking herein.

PRIEST RAPIDS

IRRIGATION DISTRICT

By R. S. REIERSON,

Secretary.

MOULTON & POWELL,

Attorney for Priest Rapids
Irrigation District.

State of Washington,
County of Yakima—ss.

R. S. Reiersen, being first duly sworn, states: That he is Secretary of the board of Directors of Priest

Rapids Irrigation District, that he has read the foregoing Petition, knows the contents thereof, and the same is true.

R. S. REIERSON.

Subscribed and sworn to before me this 12th day of February, 1946.

[Seal] HENRY V. BRIMMER,

Notary Public in and for the State of Washington,
residing at Yakima.

Filed: April 8, 1946. [174]

[Title of District Court and Cause.]

ORDER

This matter having come on regularly and in its order to be heard upon the petition of the Priest Rapids Irrigation District for the payment of \$650.00 now in the registry of the above entitled Court, and it appearing to the Court from the records and files herein and from the statements made in open court by counsel for the respective parties that all the indebtedness of the Priest Rapids Irrigation District has been paid, and that the sum of \$650.00 now in the registry of the above entitled Court represents the balance of estimated just compensation paid into this Court, and that the same should be paid to the Priest Rapids Irrigation Dis-

trict for use in its current operations, and the Court being duly and fully advised in the law and in the premises,

Now, therefore, it is hereby ordered that the sum of \$650.00 be paid to the Priest Rapids Irrigation District by the Clerk of the above entitled Court.

And it is further ordered that the payment of said sum to the Priest Rapids Irrigation District shall in no way constitute a waiver of the right of said District to contest the amount of estimated just compensation paid into the registry of the above entitled Court.

Done by the Court this 8th day of April, 1946.

J. STANLEY WEBSTER.

Approved:

BERNARD H. RAMSEY,
of Attorneys for Petitioner.

Presented by:

CHARLES L. POWELL,
of Attorneys for Defendant,
Priest Rapids Irrigation
District.

Filed: April 8, 1946. [175]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR HEARING
ON DEMURRER.

Pursuant to stipulation between counsel for the petitioner and the defendant irrigation district, and for cause shown in said stipulation,

It is hereby ordered that the date for the hearing of petitioner's demurrer shall be such date subsequent to May 15, 1946 as the Court may set.

Done by the Court this 9th day of April, 1946.

LLOYD L. BLACK,

United States District Judge.

Presented by:

CHARLES L. POWELL,

MOULTON & POWELL,

Attorneys for Defendant.

Consented to:

BERNARD H. RAMSEY,

Attorney for Petitioner.

Filed: April 11, 1946.

In the District Court of the United States for the
Eastern District of Washington, Southern
Divison.

No. 128-99 and 128-100

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS and ERNEST H.
DIETRICH and RUTH DIETRICH, husband
and wife, JOE E. MILLARD, D. M. ALLEN,
HENRY DERANLEAU, RICHLAND IR-
RIGATION DISTRICT, a municipal corpo-
ration of the State of Washington, C. I.
WRIGHT and MAMIE WRIGHT, husband
and wife, B. SALVINI, J. H. EVETT, and
PRIEST RAPIDS IRRIGATION DIS-
TRICT, a municipal corporation of the State
of Washington,

Defendants.

MOTION FOR APPOINTMENT OF TRUSTEE
OR RECEIVER AND FOR RESTRAINING
ORDER.

Comes now the United States of America, peti-
tioner herein, and shows:

I.

That heretofore the petitioner instituted this ac-
tion and has long since acquired all of the private
land within the Priest Rapids Irrigation District,

as well as all the private lands within the Richland Irrigation District hereinafter referred to as the Irrigation districts, and that now the fee title absolute to all such lands is vested in the United States of America, together with all appurtenances and rights of the former owners of said land, and that thereafter the petitioner filed in said cause of action, declarations of taking Nos. 99 and 100, whereby the petitioner acquired all of the separate lands owned by the Irrigation Districts, all of which more specifically appears from the records of this Court in this proceeding.

II.

That after the United States had acquired all of the lands in said districts, as well as all of the property and rights of said districts, the [177] Irrigation Districts filed in this action certain pleadings seeking affirmative relief and the issue was joined by the petitioner filing herein its demurrers; that upon a hearing thereof, this Court sustained said demurrers and granted said Irrigation Districts leave to file amended pleadings with the suggestion that a prayer be contained therein for the appointment of a trustee or receiver, as appears from the Memorandum Opinion of this Court filed June 21, 1945, and orders filed June 25, 1945. The amended answers have been filed, without asking for a receiver, demurrer filed thereto, and are now pending before the Court.

III.

That on the date of the institution of this action, the said Irrigation Districts, and each of them, were duly organized and existing public corporations under and by virtue of the laws of the State of Washington, but that as hereinabove set out the United States of America, by direct purchase and by the filing of declarations of taking in this proceeding, has acquired all of the privately-owned lands within the boundaries of each of said Districts, together with all water rights appurtenant to said lands, and has acquired all of the lands, properties, and operational facilities of each of said Districts by Declarations of Takings Nos. 99 and 100, as appears from the records of this Court herein; that each and all of the directors and officers of the said Districts, and each of them, have long since become disqualified to act for or on behalf of said Districts in the none of said directors and/or officers of said Districts own any land within said Districts and no longer have the qualifications provided by the laws of the State of Washington to act or serve as directors and/or officers of said Districts, and that the terms of office for which said directors and/or officers of said Districts, and each of them, was elected have long since expired; that the United States of America, petitioner herein, is the sole and only owner of land within each of said Irrigation Districts, and is the sole and only owner of the properties and operational facilities of each of said Districts, and is the sole and only beneficial owner of all other assets of each of said Districts.

IV.

That, under orders of this Court, petitioner has paid all the outstanding bonded indebtedness, to-wit: the sum of Ninety-seven Thousand and No/100 [178] Dollars (\$97,000.00), the bonded indebtedness of the Richland Irrigation District, and the sum of One Hundred Seventy Thousand Five Hundred and No/100 Dollars (\$170,500.00), the bonded indebtedness of the Priest Rapids Irrigation District, and is thereby subrogated to all the rights and priorities of the former owners of the bonds, and in substance and equity occupies the position of sole bondholder of the Irrigation District.

V.

That by virtue of the payment of the bonds under order of Court in this action of the Districts, your petitioner became in equity and substance the sole bondholder of the Districts, and by virtue of the acquisition of all private lands within the Districts in the proceeding became the sole owner thereof, and, as appears from the Memorandum Opinion of this Court, filed June 21, 1945, the adjudication of rights in the assets of the Irrigation Districts and distribution thereof is necessarily involved in this proceeding and this Court has long since acquired jurisdiction of the parties and subject matter.

VI.

That prior to the institution of this cause, the Districts were the owners and holders of numerous and sundry assets, funds and property, all of which

is now claimed by the United States of America, although the Districts, its de facto officers, representatives, attorneys and former employees are asserting in behalf of said districts, certain claims thereto, as well as the rights to manage, control and expend the monies and assets, all to the serious detriment of the petitioner, and such property and assets are in danger of being dissipated, wasted and jeopardized, and, therefore, a trustee, receiver, or other proper officer of this Court should be appointed and ordered, upon being duly qualified, to immediately take possession and control of each and all of the assets of the Irrigation Districts, all of which should be managed subject to the proper orders of this Court and protected, preserved and conserved, to the end that all rights may be adjudicated herein and all assets distributed under the orders of this Court.

VII.

Petitioner would further show the Court that subsequent to the institution of this action and subsequent to the ruling of this Court on the particular subject matter of the controversy, by orders of this Court filed June 25, 1945, and Memorandum of the Court filed June 21, 1945, certain parties defendant to this proceeding instituted in the Superior Court of the State of Washington in and for Benton County, a cause of action seeking the aid of that Court to obtain possession, control and management of all of the funds, assets and property of the Richland Irrigation District, which cause is styled,

Ernest H. Dietrich, Ruth Dietrich, Joe E. Millard, D. M. Allen, Henry Deranleau, and Richland Irrigation District, a municipal corporation of the State of Washington, Plaintiffs, against Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly, County Treasurer of Benton County, Washington, Defendants, a duly certified transcript of the record in said cause of action being hereto attached, marked Exhibit "A", and asked to be considered a part of this paragraph of this motion, and that, also, certain parties defendant in this proceeding instituted in the Superior Court of the State of Washington in and for Benton County a cause of action seeking the aid of that Court to obtain possession, control and management of all the funds, assets and properties of the Priest Rapids Irrigation District, which cause is styled, C. I. Wright and Mamie Wright, husband and wife, B. Salvini, J. H. Evett, and Priest Rapids Irrigation District, a municipal corporation of the State of Washington, Plaintiffs, v. Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly, County Treasurer of Benton County, Washington, a duly certified transcript of the record in said cause of action being hereto attached and marked Exhibit "B", and asked to be considered a part of this paragraph of this motion.

VIII.

That as appears upon the face of the complaint filed in the two causes above referred to in the Superior Court of the State of Washington for

Benton County and the record proper in this cause, said Superior Court of the State of Washington is without jurisdiction to adjudicate the interest of this proceeding, and the adjudication of the same in that Court will conflict with this proceeding and involve the parties and subject matter over which this Court has previously acquired jurisdiction and is and was in the process of exercising the same, and that, therefore, each and all of the plaintiffs, their employees, agents and [180] attorneys should be restrained and ordered to cease and desist from the prosecution of these two actions in the State Court.

IX.

That as appears from the letters from J. K. Cheadle, Attorney for the Plaintiffs in both of the aforesaid State cases, it is the intent of the plaintiffs (defendants herein) in each of said cases, to bring said cases on for hearing or trial on or before the 16th day of May, 1946, and that the entry of judgment and orders prayed for in two said State cases would do irreparable injury to the United States of America and would waste, jeopardize and dissipate the assets of the Irrigation District, and would place the control of said assets in the hands of said State Court.

Wherefore, Petitioner prays the Court:

1. That a trustee, receiver or other officer of this Court be appointed and ordered to take full charge, possession and control of all of the funds, assets and properties of the Richland Irrigation

District and to hold and conserve the same subject to and under the orders of this Court.

2. That a trustee, receiver or other officer of this Court be appointed and ordered to take full charge, possession and control of all of the funds, assets and properties of the Priest Rapids Irrigation District and to hold and conserve the same subject to and under the orders of this Court.

3. That both of said officers should be further ordered to report to the Court within a reasonable time a full inventory of all funds and assets and properties of the said Richland Irrigation District and the said Priest Rapids Irrigation District.

4. That all parties claiming any interest in and to said assets of the Richland Irrigation District and the Priest Rapids Irrigation District be notified to appear herein within a reasonable time and assert the same to the end that all rights may be adjudicated herein and that all persons holding, in possession or control of any of such assets be ordered to immediately deliver the same to the duly appointed and qualified officers of this Court.

5. That the plaintiffs in the two State causes of action above referred to, their officers, agents, employees, representatives and attorneys be ordered to refrain from the prosecution of said actions until such time as this Court shall have ruled in the premises.

6. That the plaintiffs in said two State causes of action, and each and all of them, be restrained

and enjoined from proceeding further in said cases until such time as this Court may bring this matter on for hearing and make and enter herein such orders, judgments and decrees as may be meet and proper in the premises.

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General. [182]

State of Washington,
County of Yakima—ss.

I, Bernard H. Ramsey, being first duly sworn, on oath depose and say: That I am a Special Assistant to the Attorney General in charge of the lands Division office of the Department of Justice for the Eastern District of Washington, and that I make this verification for and on behalf of the United States of America, and that I have read the foregoing Motion for Appointment of Trustee or Receiver and for Restraining Order, know the contents thereof, and that the same is true I verily believe.

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

Subscribed and sworn to before me this 2nd day of May, 1946.

[Seal] M. C. DELLE,
Notary Public in and for the State of Washington,
residing at Yakima.

My commission expires January 8, 1949. [183]

Filed May 6, 1946.

[Letterhead J. K. Cheadle]

Apr. 17, 1946.

April 16, 1946

Mr. Bernard H. Ramsey
Special Assistant to the Attorney General
Lands Division, Department of Justice
520 Miller Building
Yakima, Washington

Re: Civil No. 128-99, 128-100 and Dietrich v.
Chapman, in Benton County Court.

Dear Mr. Ramsey:

Enclosed is a copy of my letter to the clerk of the Superior Court in Prosser, transmitting to him for filing the original of the "Order Overruling Demurrer and Denying Motion to Quash and Dismiss."

I am advised by Mr. Powell that he has forwarded to Judge Paul, with a request that he send it on to the clerk at Prosser, the signed stipulation in the federal cases, Judge Black having signed an order in accordance with that stipulation. Accordingly, the time to file answer in Dietrich et al. v. Chapman et al. has been extended to 30 days from March 28, which time, I believe, will expire on April 29.

The defendants having already filed their answer in that action, if the Government should decide prior to April 29 that it will not file any further

pleading therein, I would appreciate being so advised promptly so that hearing on the merits in that action can be expedited.

Sincerely yours,

JKC:jt /s/ J. KENNARD CHEADLE.

cc—Andrew Brown

April 16, 1946

Clerk of the Court
Superior Court of the State of Washington
In and for Benton County
Prosser, Washington

Re: Dietrich et al. v. Chapman et al.

Dear Sir:

I have to day received from Judge Timothy A. Paul the enclosed "Order Overruling Demurrer and Denying Motion to Quash and Dismiss" in the above entitled action, which Judge Paul signed on April 11, 1946. Please file this order in the above entitled action.

Sincerely yours,

/s/ J. KENNARD CHEADLE.

JKC:jt

[Letterhead J. K. Cheadle]

May 2, 1946

May 1, 1946

Mr. Bernard H. Ramsey
Special Assistant to the Attorney General
Lands Division, Department of Justice
520 Miller Building
Yakima, Washington

Dear Mr. Ramsey:

Thank you for your letter of April 30 with which you enclosed Suggestion of Interest in the case of Dietrich v. Chapman.

Earlier today I wrote to the Clerk of the Court at Prosser, enclosing a notice of issue of fact and note for trial docket in the Dietrich case. I sent a carbon copy of that letter to you.

Enclosed herewith is a copy of a letter I have just sent to the Clerk of the Court at Prosser re Wright et al. vs. Chapman et al., involving the Priest Rapids Irrigation District. Assuming that Mr. Andrew Brown files answer in that case tomorrow, as he presently intends to do, I hope that the Wright case and the Dietrich case both will be set for trial on May 16.

I assume that the United States, in view of the similarity of the two cases, probably will file a similar Suggestion of Interest in the Wright case. Accordingly, I am advising you of my efforts to have the Wright case as well as the Dietrich case set for trial on May 16 so that you will have ample time to file in that cause.

Sincerely yours,

/s/ J. KENNARD CHEADLE.

JKC:jt

cc—Mr. Andrew Brown

May 1, 1946

Clerk of the Court

Superior Court of the State of Washington

For Benton County

Prosser, Washington

Dear Sir:

This is a followup of my letter earlier today with which I enclosed a notice of issue of fact and note for trial docket in Dietrich et al. v. Chapman et al., No. 7987.

Mr. Andrew Brown of Prosser is attorney for defendants in the Dietrich case, and is also attorney for defendants in the similar action of Wright et al. v. Chapman et al.

I have just been advised that Mr. Brown probably will file an answer in Wright et al. v. Chapman et al. tomorrow; and further, that Mr. Brown would have no objection to both the Dietrich case and the Wright case being set for trial on May 16.

Accordingly, I respectfully request that both of the above cases be set for trial on May 16, 1946.

Respectfully yours,

/s/ J. KENNARD CHEADLE.

JKC:jt

cc—Andrew Brown

Bernard Ramsey

May 2, 1946

May 1, 1946

Clerk of the Court
Superior Court of the State of Washington
For Benton County
Prosser, Washington

Dear Sir:

Enclosed is a notice of issue of fact and note for trial docket in Dietrich et al. v. Chapman et al., No. 7987.

Mr. Andrew Brown, attorney for plaintiffs, accepted service of this notice on April 30 and returned it to me.

I hope that this cause can be brought on May 2 to be set for trial.

Since it is quite possible that another and similar action, Wright et al. v. Chapman et al., could with convenience to Judge Paul and others concerned be tried on the same date, provided the trial date is late enough this month to permit further pleadings in the Wright case—I respectfully suggest that the Dietrich et al. v. Chapman et al. be set for trial on or about May 16.

Respectfully yours,

/s/ J. KENNARD CHEADLE.

JKC:jt

cc—Andrew Brown

Bernard Ramsey

EXHIBIT "A"

In the Superior Court of the State of Washington
in and for Benton County

No. 7987

ERNEST H. DIETRICH, RUTH DIETRICH,
JOE E. MILLARD, D. M. ALLEN, HENRY
DERANLEAU, and RICHLAND IRRIGA-
TION DISTRICT, a municipal corporation of
the State of Washington,

Plaintiffs,

vs.

HARLEY E. CHAPMAN, County Auditor of Ben-
ton County, Washington, and C. W. NESS-
LY, County Treasurer of Benton County,
Washington,

Defendants.

SUMMONS

The State of Washington, to the said Harley E.
Chapman, County Auditor of Benton County,
Washington, and C. W. Nessly, County Treas-
urer of Benton County, Washington, Defend-
dants:

You are hereby summoned to appear within
twenty days after service of this Summons upon
you, exclusive of the day of service, if served within
the State of Washington; or within sixty days after
service upon you, exclusive of the day of service,
if served out of the State of Washington, and

answer the complaint and serve a copy of your answer upon the undersigned at the place below specified, and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint, which will be filed with the clerk of said court, a copy of which is herewith served upon you.

J. K. CHEADLE,
Attorney for Plaintiffs.

In the Superior Court of the State of Washington
in and for Benton County

No. 7987

ERNEST H. DIETRICH, RUTH DIETRICH,
JOE E. MILLARD, D. M. ALLEN, HENRY
DERANLEAU, and RICHLAND IRRIGA-
TION DISTRICT, a municipal corporation
of the State of Washington,

Plaintiffs,

vs.

HARLEY E. CHAPMAN, County Auditor of Ben-
ton County, Washington, and C. W. NESSLY,
County Treasurer of Benton County, Wash-
ington,

Defendants.

COMPLAINT

Complaining of the defendants, the plaintiffs allege:

I.

That the plaintiffs Ernest H. Dietrich and Ruth Dietrich were on and prior to February 23, 1943, the owners of the following described real property, to-wit:

Northeast quarter of Northwest quarter of Northeast quarter, Section three (3), Township nine (9) North, Range twenty-eight (28) East, Willamette Meridian, containing 10.14 acres.

II.

That said property was located within the Richland Irrigation District, subject to assessments for said district, received its irrigation water from said district, and said property and the plaintiffs Dietrich, as owners of said property, were entitled to each and all of the benefits, as well as the burdens, of the laws of the State of Washington pertaining to irrigation districts under which the Richland Irrigation District was organized and operated. [185]

III.

That the Richland Irrigation District did on February 23, 1943, have within its boundaries a total of 10,509.23 acres of land, of which 6,068.69

acres were owned by so-called private landowners such as plaintiffs Dietrich; that the balance was owned by said district; and that said plaintiffs Dietrich were therefore the owners of .167% of all the land in private ownership in said district as of said date.

IV.

That said plaintiffs Dietrich sue for the benefit of themselves and all other persons similarly situated, more particularly each and every owner of land in private ownership within the Richland Irrigation District as of February 23, 1943.

V.

That the plaintiffs Joe E. Millard, D. M. Allen and Henry Deranleau, were on February 23, 1943, the duly elected, qualified and acting directors of the Richland Irrigation District; and that since said date they have continued to function as directors of said district.

VI.

That the plaintiff Richland Irrigation District is a duly organized irrigation district, organized and existing under and by virtue of the laws of the State of Washington, and that C. F. Fletcher is the duly appointed, qualified and acting secretary of said district.

VII.

That the defendant Harley E. Chapman is the duly elected, qualified and acting County Auditor of Benton County, Washington.

VIII.

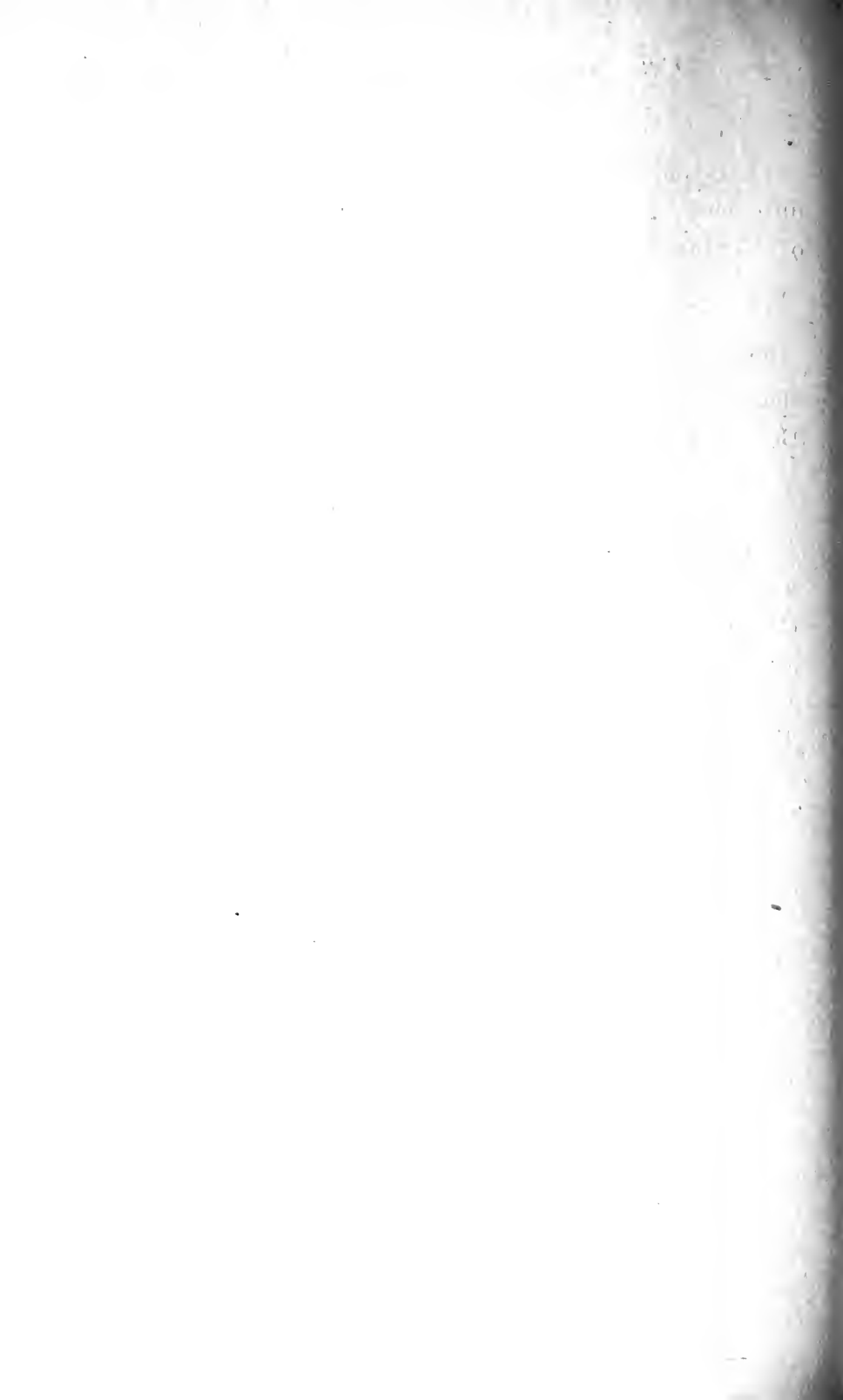
That the defendant C. W. Nessly is the duly elected, qualified and acting County Treasurer of Benton County, Washington. [186]

IX.

That under the laws of the State of Washington it is the duty of the County Auditor of Benton County, Washington, to issue warrants upon vouchers approved by the Richland Irrigation District, said warrants to be issued on the funds of said district as directed by the vouchers so approved; that it is the duty of the County Treasurer of Benton County, Washington, ex officio treasurer of said district, to pay said warrants from the funds of said district in the hands of said County Treasurer; and that there are sufficient and ample funds of said district in the hands of the County Treasurer of Benton County, Washington, to pay each and all of the warrants requested to be issued by the Richland Irrigation District.

X.

That said district has approved vouchers and requested the issuance of warrants as follows:



Voucher No.	To Whom Issued	Date Allowed	Amount	Purpose
4545	C. F. Fletcher, Secretary	4/3/45	\$255.40	March Salary
4546	Joe E. Millard.....	4/3/45	4.50	Directors' Meeting
4547	H. R. Deranleau.....	4/3/45	4.50	" "
4548	National Bank of Commerce.....	4/3/45	25.00	Rent
4550	C. F. Fletcher, Secretary	5/1/45	389.20	Reimbursement Revolving Fund (Withhold. Tax 133.80, Sec's Apr. Salary \$255.40)
4551	Joe E. Millard.....	5/1/45	4.50	Directors' Meeting
4552	H. R. Deranleau.....	5/1/45	4.50	" "
4553	National Bank of Commerce.....	5/1/45	25.00	Rent
4555	C. F. Fletcher, Secretary	7/3/45	535.80	Reimbursement Revolving Fund (Sec's. May Salary 255.40, June Salary 255.40, Rent 25.00)
4556	Joe E. Millard.....	7/3/45	4.50	Directors' Meeting
4557	H. R. Deranleau.....	7/3/45	4.50	" "
4559	Harold Fyfe Agency.....	7/3/45	12.50	Secretary's Bond
4560	E. I. duPont deNemours.....	7/3/45	3.63	'43 Telephone Charge
4561	C. F. Fletcher, Secretary	9/4/45	280.40	Reimbursement Revolving Fund (Sec's. July Salary 255.40, Rent 25.00)
4562	Joe E. Millard.....	9/4/45	9.00	Directors' Meetings
4563	H. R. Deranleau.....	9/4/45	9.00	" "
4566	C. F. Fletcher, Secretary	10/2/45	323.80	Reimbursement Revolving Fund (Sec's. Aug. Salary 136.90, Sept. Salary 136.90, Rent 50.00)
4567	Joe E. Millard.....	10/2/45	4.50	Directors' Meeting
4568	H. R. Deranleau.....	10/2/45	4.50	" "
4570	C. F. Fletcher, Secretary	11/6/45	232.70	Reimbursement Revolving Fund (Withhold. Tax 70.80, Sec's. Oct. Salary 136.90, Rent 25.00)
4571	Joe E. Millard.....	11/6/45	4.50	Directors' Meeting
4572	H. R. Deranleau.....	11/6/45	4.50	" "
4574	C. F. Fletcher, Secretary	12/4/45	161.90	Reimbursement Revolving Fund (Sec's. Nov. Salary 136.90, Rent 25.00)
4575	Joe E. Millard.....	12/4/45	4.50	Directors' Meeting
4576	H. R. Deranleau.....	12/4/45	4.50	" "

[illegible]

XI.

That each and all of said vouchers are for the issuance of warrants to pay valid and existing claims against the Richland Irrigation District and its funds but the County Auditor of Benton County, Washington, wrongfully refuses to issue any of said warrants on said vouchers upon the ground that the United States of America, through one of its agents, Bernard H. Ramsey, Special Assistant to the Attorney General, by letter has requested the County Treasurer of Benton County not to pay any warrants for salaries of members of said district's board of directors, for salary of said district's secretary or for legal services for said district, and has advised said County Treasurer that any such payments would be made at his own risk.

XII.

That the United States of America does not now have and never has had any right, title or interest in or to the funds or monies of the Richland Irrigation District; and that the said wrongful refusal of said County Auditor to issue said warrants is an unlawful interference with the functioning of the Richland Irrigation District, and is in violation of the laws of the State of Washington prescribing the duties of said County Auditor. [188]

XIII.

That the said Harley E. Chapman, as County Auditor of Benton County, Washington, has wrong-

fully refused, and still wrongfully refuses, to issue the warrants described in paragraph X hereof or any warrants requested by vouchers issued and approved by the Richland Irrigation District.

XIV.

That the said C. W. Nessly, as County Treasurer of Benton County, Washington, brought said letter, referred to in paragraph XI hereof, to the attention of said County Auditor and advised said County Auditor that in view of said letter he, said County Treasurer, would not pay said warrants or any other warrants on the funds of said district if the same were issued by said County Auditor, unless and until directed to do so by an order or decree of court.

XV.

That on February 23, 1943, a condemnation proceeding, entitled United States of America, petitioner, v. Clements P. Alberts, defendant, Civil No. 128, was commenced in the District Court of the United States for the Eastern District of Washington; and that in its petition for condemnation filed on said date and in the order of said court entered on the same date and granting to the United States of America the right of immediate possession, the property covered by said petition and order included the farm lands and other real properties and improvements owned by the Richland Irrigation District and included the lands of private landowners in said district, including the land owned by the plaintiffs Dietrich and described in paragraph I hereof.

XVI.

That in April, 1943, and pursuant to said order of February 23, 1943, the said petitioner, the United States of America, took possession of all the property of the Richland Irrigation District covered by said order, except said district's office, diversion works, and [189] main and lateral canals; and that possession of said office, diversion works and canals was taken pursuant to said order on or about November 1, 1943.

XVII.

That on or about May 19, 1943, the United States of America filed in said Civil No. 128 an amended petition for condemnation, accompanied by a declaration of taking and a deposit paid into court, entitled United States of America, petitioner, v. Clements P. Alberts, Ernest H. Dietrich, et al., defendants, and numbered Civil No. 128-4; that said amended petition and declaration of taking covered said property of plaintiffs Dietrich but did not cover any of said properties of said district; and that by the filing of said declaration of taking the said petitioner took title to said property of plaintiffs Dietrich, which title was described in said amended petition and declaration of taking as follows:

“The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, for pipelines and for existing irrigation ditches, canals and laterals owned by the Richland Irrigation District.”

XVIII.

That on or about October 10, 1943, compensation for the taking of the said property of plaintiffs Dietrich was determined by a jury in said proceeding No. 128-4. That in the course of said proceeding, on October 8, 1943, plaintiffs Dietrich offered to prove the value of the properties of the Richland Irrigation District, which had been taken by the said petitioner pursuant to said order of February 23, 1943, in order that plaintiffs Dietrich might have said value determined and their proportionate share thereof awarded in their jury trial; that the said petitioner objected to said offer of proof; and that said objection was sustained and said offer of proof rejected, as explained by said court, because in the trial for determining the [190] compensation to be paid for said land of plaintiffs Dietrich, there was no room to try also the value of their proportionate share of said district's properties, also because said plaintiffs Dietrich were not the owners of the legal title to said district's properties and because they had no right to assert a direct claim to their proportionate share, and also in order to avoid the chaos, awkwardness and confusion of numerous determinations by different juries of the value of said district's properties. That said jury trial proceeded in accordance with said limitation on proof; and that the compensation award to plaintiffs Dietrich was exclusively for their real property as herein-above described. That other proceedings against farm tracts of other private landowners in said district proceeded under the

same limitation on proof, in part because of an assurance given by said petitioner in open court that said petitioner would proceed expeditiously to file declarations of taking and have just compensation determined with respect to said properties of said district.

XIX.

That the said petitioner in said condemnation action, Civil No. 128, in May 1944 filed therein amended petitions and declarations of taking, numbered Civil No. 128-98 and Civil No. 128-100, covering said district properties; and that said district properties have been covered only by the original petition in said Civil No. 128, and by the amended petitions and declarations of taking in said Civil No. 128-98 and Civil No. 128-100.

XX.

That said petitioner by demurrer to the answer of the defendant Richland Irrigation District in said Civil No. 128-100 is contending and urging upon said court that said defendant district, named defendant by the said petitioner, has no capacity to answer or defend against the amended petition served on it by said petitioner, that said Joe E. Millard, D. M. Allen and Henry Deranleau are not qualified to represent said district and that the said petitioner acquired from the plaintiffs Dietrich and other similarly situated private landowners of property in said district full right, title and interest in

and to all assets of said district, although in the proceedings in Civil No. 128-4 in which said petitioner acquired by condemnation the said land of plaintiffs Dietrich, there was not any proof of or compensation for the value of said district's properties, for the reasons set forth in paragraph XVIII hereof.

XXI.

That under the laws of the State of Washington legal title to irrigation district properties is vested in the district and such properties are held by the district in trust for the purposes of the irrigation district and for the benefit of the creditors and private landowners of the district; that said relationship of trustee and beneficiaries existed between the Richland Irrigation District and plaintiffs Dietrich on February 23, 1943, with regard to the properties of said district taken by said petitioner's exercise of the power of eminent domain and that said relationship continues to exist with regard to the fund or just compensation for said properties; that said fund stands in the place of said properties and that said petitioner, the condemner, has no interest in said fund.

XXII.

That plaintiffs Dietrich have an interest in said fund in said condemnation proceeding and have an interest in the success of the defendant Richland Irrigation District in said condemnation proceeding.

XXIII.

That the equitable administration of the trust of which the Richland Irrigation District is trustee, and the interests of plaintiffs Dietrich, as beneficiaries, are imperiled and interfered with [192] by reason of: (1) the challenge in said condemnation proceeding of the capacity of said district to answer and defend and the challenge in said proceeding of the qualifications of said Joe E. Millard, D. M. Allen and Henry Deranleau to function as directors of said district; and (2) the wrongful action of defendants Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly, County Treasurer of Benton County, Washington, in refusing to issue and pay said warrants, thereby rendering difficult and interfering with said district's defense against the United States of America in said condemnation proceeding and with said district's general administration of said trust.

Wherefore, plaintiffs pray that this court in the exercise of its equity jurisdiction:

- (1) Take jurisdiction of the trust of which, under the laws of the State of Washington, the Richland Irrigation District is trustee;
- (2) Decree that said Joe E. Millard, D. M. Allen and Henry Deranleau are de facto directors of the Richland Irrigation District; that they shall continue to function as directors of said district and shall do any and all things necessary to defend

against the United States of America in said condemnation action and to protect the interests of said trust; and that pursuant to vouchers approved by them, the County Auditor of Benton County, Washington, shall issue warrants, and the County Treasurer of Benton County, Washington, shall pay such warrants, in the same manner and with the same effect as provided by the laws of the State of Washington with respect to vouchers approved by irrigation district directors;

or, in the alternative,

Appoint said Joe E. Millard, D. M. Allen and Henry Deranleau as trustees of the Richland Irrigation District [193] with power to sue and be sued in the name of said district or in their own names as trustees, and with power to do any and all things necessary to defend against the United States of America in said condemnation action and to protect the interests of said trust; and order the County Treasurer of Benton County, Washington, to pay into this court the funds received and held by him as ex-officio treasurer of the Richland Irrigation District, said funds to be available for expenditure by said trustees subject to approval by this court.

- (3) Decree that any award in said condemnation action, United States of America v.

Clements P. Alberts, et al., Civil No. 128, which may be ordered by said district court of the United States to be paid to the Richland Irrigation District, or to said Joe E. Millard, D. M. Allen and Henry Deranleau as trustees, shall upon receipt be paid into this court, to be paid out upon order of this court after further appropriate proceedings;

- (4) Decree that this court retains jurisdiction of this matter for further appropriate supervision of the administration of said trust and for further appropriate proceedings directed toward dissolution of the Richland Irrigation District and distribution of the corpus of the trust;
- (5) Decree that not later than sixty days after final decision in said condemnation action, including final disposition of any appeal or review proceedings, said Joe E. Millard, D. M. Allen and Henry Deranleau, as directors or trustees as the case may be, shall report to this court the final [194] decision in said condemnation action and shall suggest to this court such further proceedings in this matter as shall be deemed by them to be proper and in accordance with the decree of this court.

/s/ J. K. CHEADLE,

Attorney for Plaintiffs.

State of Washington,
County of Yakima—ss.

Ernest H. Dietrich, being first duly sworn, deposes and says: That he is one of the plaintiffs above named and makes this verification in behalf of himself and plaintiff Ruth Dietrich; that he has read the above and foregoing complaint and knows the contents thereof and believes the same to be true.

/s/ ERNEST H. DIETRICH

Subscribed and sworn to before me this 18th day of February, 1946.

[Seal)

M. D. OLMSTEAD,

Notary Public in and for the State of Washington,
residing in Grandview.

State of Washington,
County of Benton—ss.

Joe E. Millard, being first duly sworn, deposes and says: That he is one of the plaintiffs above named and makes this verification in behalf of himself and plaintiffs D. M. Allen, Henry Deranleau and Richland Irrigation District; that he has read the above and foregoing complaint and knows the contents thereof and believes the same to be true.

/s/ JOE E. MILLARD

Subscribed and sworn to before me this 15th day of February, 1946.

FLOYCE SMITH,

Notary Public in and for the State of Washington,
residing in Kennewick.

Filed February 25, 1946. [195]

[Title of Superior Court and Cause.]

CERTIFICATE

I, Bess Royer, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Summons and Complaint, filed February 25, 1946, in the above entitled action, as the same now appears on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court this 3rd day of May, 1946.

[Seal]

BESS ROYER, Clerk,
By WILMA OLIVER, Deputy.

EXHIBIT "B"

In the Superior Court of the State of Washington
for Benton County

No. 8035

C. I. WRIGHT and MAMIE WRIGHT, husband
and wife, B. SALVINI, J. H. EVETT, and
PRIEST RAPIDS IRRIGATION DIS-
TRICT, a municipal corporation of the State
of Washington,

Plaintiffs,

vs.

HARLEY E. CHAPMAN, County Auditor of Ben-
ton County, Washington, and C. W. NESSLY,
County Treasurer of Benton County, Wash-
ington,

Defendants.

SUMMONS

To the said Harley E. Chapman, County Auditor
of Benton County, Washington, and C. W.
Nessly, County Treasurer of Benton County,
Washington, defendants.

You are hereby summoned to appear within
twenty days after service of this Summons upon
you, exclusive of the day of service, if served out
of the State of Washington, and answer the com-
plaint and serve a copy of your answer upon the
undersigned at the place below specified, and de-
fend the above entitled action in the court of afore-

said; and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint, which will be filed with the clerk of said court, a copy of which is herewith served upon you.

J. K. CHEADLE,

Attorney for Plaintiff.

P. O. Address: Old National Bank Building, Spokane, Washington.

In the Superior Court of the State of Washington
in and for Benton County

No. 8035

C. I. WRIGHT and MAMIE WRIGHT, husband
and wife, B. SALVINI, J. H. EVETT, and
PRIEST RAPIDS IRRIGATION DIS-
TRICT, a municipal corporation of the State
of Washington,

Plaintiffs,

vs.

HARLEY E. CHAPMAN, County Auditor of Ben-
ton County, Washington, and C. W. NESSLY,
County Treasurer of Benton County, Wash-
ington,

Defendants.

Complaining of the defendants, the plaintiffs
allege:

I.

That the plaintiffs C. I. Wright and Mamie
Wright, husband and wife, were on and prior to

February 23, 1943, the owners of the following described real property, to-wit:

Southeast quarter of Southwest quarter of Southeast quarter, Section twenty-five (25), Township fourteen (14) North, Range twenty-six (26) East, Willamette Meridian, containing 10 acres.

II.

That said property was located within the Priest Rapids Irrigation District, subject to assessments for said district, received its irrigation water from said district, and said property and the plaintiffs Wright, as owners of said property, were entitled to each and all of the benefits, as well as the burdens, of the laws of the State of Washington pertaining to irrigation districts under which the Priest Rapids Irrigation District was organized and operated.

III.

That the Priest Rapids Irrigation District did on February 23, 1943, have within its boundaries a total of 15,891.93 acres of land, of which 5731.97 [198] acres were owned by so-called private land-owners such as plaintiffs Wright; that the balance was owned by said district; and that said plaintiffs Wright were therefore the owners of .174% of all the land in private ownership in said district as of said date.

IV.

That said plaintiffs Wright sue for the benefit of themselves and all other persons similarly situated, more particularly each and every owner of land in private ownership within the Priest Rapids Irrigation District as of February 23, 1943.

V.

That the plaintiffs B. Salvini and J. H. Evett were on February 23, 1943, the duly elected, qualified and acting directors of the Priest Rapids Irrigation District; and that since said date they have continued to function as directors of said district.

VI.

That the plaintiff Priest Rapids Irrigation District is a duly organized irrigation district, organized and existing under and by virtue of the laws of the State of Washington, and that R. S. Reiersen is the duly appointed, qualified and acting secretary of said district.

VII.

That the defendant Harley E. Chapman is the duly elected, qualified and acting County Auditor of Benton County, Washington.

VIII.

That the defendant C. W. Nessly is the duly elected, qualified and acting County Treasurer of Benton County, Washington.

IX.

That under the laws of the State of Washington it is the duty of the County Auditor of Benton County, Washington to [199] issue warrants upon vouchers approved by the Priest Rapids Irrigation District, said warrants to be issued on the funds of said district as directed by the vouchers so approved; and that it is the duty of the County Treasurer of Benton County, Washington, ex officio treasurer of said district, to pay said warrants from the funds of said district in the hands of said County Treasurer.

X.

That plaintiffs are informed and believe that vouchers for the issuance of warrants to pay valid and existing claims against the Richland Irrigation District, an irrigation district of the State of Washington which is in a situation similar to that of the Priest Rapids Irrigation District, and the funds of said Richland District have been presented to the County Auditor of Benton County, Washington, and that said county auditor wrongfully refuses to issue any of said warrants on said vouchers upon the ground that the United States of America, through one of its agents, Bernard H. Ramsey, Special Assistant to the Attorney General, by letter has requested the County Treasurer of Benton County not to pay any warrants for salaries of members of said Richland District's board of directors, for salary of said Richland District's secretary or for legal services for said Richland District, and has advised said County Treasurer that any such payments would be made at his own risk.

XI.

That the United States of America does not now have and never has had any right, title or interest in or to the funds or monies of the said Richland Irrigation District or of the Priest Rapids Irrigation District; and that the said wrongful refusal of said County Auditor to issue said warrants is an unlawful interference with the functioning of the Richland Irrigation District and threatens an unlawful interference with the functioning of the Priest Rapids Irrigation District, and is in violation of the laws [200] of the State of Washington prescribing the duties of said County Auditor.

XII.

That the said Harley E. Chapman, as County Auditor of Benton County, Washington, has wrongfully refused, and still wrongfully refuses, to issue any warrants requested by vouchers issued and approved by said Richland Irrigation District; that plaintiffs are informed and believe that said County Auditor will refuse, likewise, to issue any warrants requested by vouchers issued and approved by the Priest Rapids Irrigation District; and that said threatened wrongful refusal to issue warrants threatens an unlawful interference with the functioning of the Priest Rapids Irrigation District.

XIII.

That the said C. W. Nessly, as County Treasurer of Benton County, Washington, brought said letter,

referred to in paragraph X hereof, to the attention of said County Auditor and advised said County Auditor that in view of said letter he, said County Treasurer, would not pay any warrants on the funds of said Richland District if the same were issued by said County Auditor, unless and until directed to do so by an order or decree of Court; and that plaintiffs are informed and believe that said County Treasurer will refuse, likewise, to pay any warrants on the funds of the Priest Rapids Irrigation District; and that said threatened wrongful refusal to pay warrants threatens an unlawful interference with the functioning of the Priest Rapids Irrigation District and deprives said district of the treasury and the ex officio treasurer provided for irrigation districts by the laws of the State of Washington.

XIV.

That on February 23, 1943, a condemnation proceeding, entitled United States of America, petitioner, v. Clements P. Alberts, [201] defendant, Civil No. 128, was commenced in the District Court of the United States for the Eastern District of Washington; and that in its petition for condemnation filed on said date and in the order of said court entered on the same date and granting to the United States of America the right of immediate possession, the property covered by said petition and order included the farm lands and other real properties and improvements owned by the Priest

Rapids Irrigation District and included the lands of private landowners in said district, including the land owned by the plaintiffs Wright and described in paragraph I hereof, and included also similar properties of said Richland Irrigation District.

XV.

That in April, 1943, and pursuant to said order of February 23, 1943, the said petitioner, the United States of America, took possession of all the property of the Priest Rapids Irrigation District covered by said order, except said district's power plant, power canal and transmission lines; and that possession of said power plant, power canal and transmission lines was taken pursuant to said order on or about October 1, 1943.

XVI.

That on or about August 26, 1943, the United States of America filed in said Civil No. 128 an amended petition for condemnation, accompanied by a declaration of taking and a deposit paid into court, entitled United States of America, petitioner, v. Clements P. Alberts, C. I. Wright, et al., defendants, and numbered Civil No. 128-43; that said amended petition and declaration of taking covered said property of plaintiffs Wright but did not cover any of said properties of said district; and that by the filing of said declaration of taking the said petitioner took title to said property of plaintiffs

Wright, which title was described in said amended petition and declaration of taking as follows:

“The fee simple title, subject, however, to existing [202] easements for public roads and highways, for public utilities, for railroads, for pipelines and for existing irrigation ditches, canals and laterals owned by the Priest Rapids Irrigation District.”

XVII.

That on or about October 15, 1943, compensation for the taking of said property of plaintiffs Wright was determined by a jury in said proceeding No. 128-43. That in the course of said proceeding, on October 12, 1943, plaintiffs Wright offered to prove the value of the properties of the Priest Rapids Irrigation District, which had been taken by the said petitioner pursuant to said order of February 23, 1943, in order that plaintiffs Wright might have said value determined and their proportionate share thereof awarded in their jury trials; and the said petitioner objected to said offer of proof; and that said objection was sustained and said offer of proof rejected, as explained by said court, because in the trial for determining the compensation to be paid for said land of plaintiffs Wright, there was no room to try also the value of their proportionate share of said district's properties, also because said plaintiffs Wright were not the owners of the legal title to said district's properties and because they had no right to assert a direct claim to their pro-

portionate share, and also in order to avoid the chaos, awkwardness and confusion of numerous determinations by different juries of the value of said district's properties. That said jury trial proceeded in accordance with said limitation on proof; and that the compensation award to plaintiffs Wright was exclusively for their real property as herein-above described. That other proceedings against farm tracts of other private landowners in said district proceeded under the same limitation on proof, in part because of an assurance given by said petitioner in open court that said petitioner would proceed expeditiously to file declarations of taking and have just compensation determined with respect to said properties of said district. [203]

XVIII.

That the said petitioner in said condemnation action, Civil No. 128, in May 1944 filed therein an amended petition and declaration of taking, numbered Civil No. 128-99, covering said Priest Rapids Irrigation District's properties; and that said district properties have been covered only by the original petitions in said Civil No. 128, and by the amended petition and declaration of taking in said Civil No. 128-99.

XIX.

That said petitioner by demurrer to the answer of the defendant Priest Rapids Irrigation District in said Civil No. 128-99 is contending and urging upon said court that said defendant district, named

defendant by the said petitioner, has no capacity to answer or defend against the amended petition served on it by said petitioner, that said B. Salvini and J. H. Evett are not qualified to represent said district and that the said petitioner acquired from the plaintiffs Wright and other similarly situated private landowners of property in said district full right, title and interest in and to all assets of said district, although in the proceedings in Civil No. 128-43 in which said petitioner acquired by condemnation the said land of plaintiffs Wright, there was not any proof of or compensation for the value of said district's properties, for the reasons set forth in paragraph XVII hereof.

XX.

That under the laws of the State of Washington legal title to irrigation district properties is vested in the district and such properties are held by the district in trust for the purposes of the irrigation district and for the benefit of the creditors and private landowners of the district; and said relationship of trustee and beneficiaries existed between the Priest Rapids Irrigation District and plaintiffs Wright on February 23, 1943, with regard to the properties of said district taken by said petitioner's exercise of the power of eminent domain, and that said relationship continues to exist with regard to the fund of just compensation for said properties; that said fund stands in the place of said properties and that said petitioner, the condemner, has no interest in said fund.

XXI.

That plaintiffs Wright have an interest in said fund in said condemnation proceeding and have an interest in the success of the defendant Priest Rapids Irrigation District in said condemnation proceeding.

XXII.

That the equitable administration of the trust of which the Priest Rapids Irrigation District is trustee, and the interests of plaintiffs Wright, as beneficiaries, are imperiled and interfered with by reason of: (1) the challenge in said condemnation proceeding of the capacity of said district to answer and defendant and the challenge in said proceeding of the qualifications of said B. Salvini and J. H. Evett to function as directors of said district; and (2) the threatened wrongful action of defendants Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly, County Treasurer of Benton County, Washington, refusing to issue and pay warrants on the funds of said district, thereby rendering difficult and interfering with said district's defense against the United States of America in said condemnation proceeding and with said district's general administration of said trust.

Wherefore, plaintiffs pray that this court in the exercise of its equity jurisdiction:

(1) Take jurisdiction of the trust of which, under the laws of the State of Washington, the Priest Rapids Irrigation District is trustee;

(2) Decree that said B. Salvini and J. H. Evett are de facto directors of the Priest Rapids Irrigation [205] District; that they shall continue to function as directors of said district and shall do any and all things necessary to defend against the United States of America in said condemnation action and to protect the interests of said trust; and that pursuant to vouchers approved by them, the County Auditor of Benton County, Washington, shall issue warrants, and the County Treasurer of Benton County, Washington, shall pay such warrants, in the same manner and with the same effect as provided by the laws of the State of Washington with respect to vouchers approved by irrigation district directors:

or, in the alternative,

Appoint said B. Salvini and J. H. Evett as trustees of the Priest Rapids Irrigation District with power to sue and be sued in the name of said district or in their own names as trustees, and with power to do any and all things necessary to defend against the United States of America in said condemnation action and to protect the interests of said trust; and order the County Treasurer of Benton County, Washington, to pay into this court any funds received and held by him as ex officio treasurer of the Priest Rapids Irrigation District said funds to be available for expenditures by said trustees subject to approval by this court.

(3) Decree that any award in said condemnation action, United States of America vs. Clements P. Alberts, et al., Civil No. 128, which may be ordered by said district court of the United States to be paid to the Priest Rapids Irrigation District, or to said [206] B. Salvini and J. H. Evett as trustees, shall upon receipt be paid into this court, to be paid out upon order of this court after further appropriate proceedings;

(4) Decree that this court retains jurisdiction of this matter for further appropriate supervision of the administration of said trust and for further appropriate proceedings directed toward dissolution of the Priest Rapids Irrigation District and distribution of the corpus of the trust;

(5) Decree that not later than sixty days after final decision in said condemnation action, including final disposition of any appeal or review proceedings, said B. Salvini and J. H. Evett, as directors or trustees as the case may be, shall report to this court the final decision in said condemnation action and shall suggest to this court such further proceedings in this matter as shall be deemed by them to be proper and in accordance with the decree of this court.

/s/ J. K. CHEADLE,

Attorney for Plaintiffs. [207]

State of Washington,
County of Yakima—ss.

C. I. Wright, being first duly sworn, deposes and says: That he is one of the plaintiffs above named and makes this verification in behalf of himself and plaintiff Mamie Wright; that he has read the above and foregoing complaint and knows the contents thereof and believes the same to be true.

/s/ C. I. WRIGHT.

Subscribed and sworn to before me this 25th day of March, 1946.

[Seal] JAMES P. SALVINI,
Notary Public in and for the State of Washington,
residing in Sunnyside.

State of Washington,
County of Yakima—ss.

B. Salvini, being first duly sworn, deposes and says: That he is one of the plaintiffs above named and makes this verification in behalf of himself and plaintiff J. H. Evett and Priest Rapids Irrigation District; that he has read the above and foregoing complaint and knows the contents thereof and believes the same to be true.

/s/ B. SALVINI.

Subscribed and sworn to before me this 26th day of March, 1946.

[Seal] JAMES P. SALVINI,
Notary Public in and for the State of Washington,
residing in Sunnyside.

Filed April 4, 1946. [208]

In the Superior Court of the State of Washington
for Benton County

No. 8035

C. I. WRIGHT, et ux. et al.,

Plaintiff,

vs.

HARLEY E. CHAPMAN, County Auditor, et al.,
Defendants.

CERTIFICATE

I, Bess Royer, County Clerk, and by virtue of the laws of the State of Washington, ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Summons and Complaint, filed April 4, 1946, in the above entitled action, as the same now appears on file and of record in my office.

In Testimony Whereof, I Have hereunto set my hand and affixed the seal of said Court this 3rd day of May, 1946.

[Seal]

BESS ROYER,
Clerk.

By WILMA OLIVER,
Deputy.

Filed U.S.D.C. May 6 ,1946.

In the District Court of the United States for the
Eastern District of Washington, Southern Division.

Nos. 128-99 and 128-100

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS, et al.,

Defendants.

ORDER TO SHOW CAUSE

To Ernest H. Dietrich and Ruth Dietrich, husband and wife, Joe E. Millard, D. M. Allen, Henry Deranleau, Richland Irrigation District, a municipal corporation of the State of Washington, C. I. Wright and Mamie Wright, husband and wife, B. Salvini, J. H. Evett and Priest Rapids Irrigation District, a municipal corporation of the State of Washington, and J. K. Cheadle, their attorney:

You and Each of You Are Hereby Notified and Cited to appear in the above named Court at 9:30 a.m. o'clock on the 14th day of May, 1946, in the courtroom of the Federal Court at Yakima, Washington, then and there to show cause, if any there be, and why said Court should not,

(1) Appoint a trustee and/or receiver or other officer of this Court to take full charge, possession and control of all of the funds, assets and properties

of the Richland Irrigation District and the Priest Rapids Irrigation District, and hold and conserve the same subject to and under the orders of this Court.

(2) Require such trustees, receivers and/or officers of the Court to [209] represent to this Court, within a reasonable time, a full inventory of all funds, assets and properties of said Richland Irrigation District and said Priest Rapids Irrigation District.

(3) Make and enter herein an order or orders herein restraining and enjoining you and each of you, your officers, agents, employees, representatives, and attorneys from further prosecuting in the Superior Court of the State of Washington in and for Benton County and the case of C. I. Wright and Mamie Wright, husband and wife, B. Salvini, J. H. Evett and Priest Rapids Irrigation District, a municipal corporation of the State of Washington, Plaintiffs, vs. Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly, County Treasurer of Benton County, Washington, Defendants, being Cause No. 8035, and from further prosecution in the Superior Court of the State of Washington in and for Benton County the case of Ernest H. Dietrich and Ruth Dietrich, husband and wife, Joe E. Millard, D. M. Allen, Henry Deranleau, and Richland Irrigation District, a municipal corporation of the State of Washington, Plaintiffs, vs. Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly,

County Treasurer of Benton County, Washington,
Defendants, Cause No. 7987.

Dated this 6th day of May, 1946.

SAM M. DRIVER,

United States District Judge.

Filed May 6, 1946. [210]

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now J. K. Cheadle, one of the parties to whom this Court on May 6, 1946 issued its Order to Show Cause returnable May 14, 1946; and for himself and for and on behalf of the other parties named in said order, makes this return and responses and show of cause:

I.

Petitioner attached to its "motion for appointment of trustee or receiver and for restraining order," and incorporated in paragraph VII of said motion, exhibit "A", described as a transcript of the record in Dietrich, et al., v. Chapman, et al., in the Superior Court of the State of Washington, in and for Benton County; but there was not included in said exhibit "A" a demurrer by defendants, a motion to squash and dismiss by the United States (appearing specially) or the order of the court

denying said demurrer and motion; and copies of the same are attached to this return as exhibit "A", and are hereby incorporated by reference in this return. [211]

II.

The record in this proceeding, including exhibits "A" and "B" incorporated in paragraph VII of petitioner's said motion and exhibit "A" of this return, show that in several substantial respects the facts pertinent to said motion and said order to show cause are substantially different from the statements contained in petitioner's said motion; and show further that the legal conclusions stated or inferred in said motion of petitioner are inaccurate in so far as they have bearing on the merits of petitioner's motion.

III.

The records of this Court in this condemnation proceeding, including the aforesaid exhibits, show that with respect to petitioner's said motion the law and the equities are with the defendants and are not with the petitioner.

Wherefore, respondent prays the Court:

That petitioner's said motion be denied in all respects.

/s/ J. K. CHEADLE.

State of Washington,
County of Yakima—ss.

J. K. Cheadle, being duly sworn, deposes and says: That he is one of the parties named in the above described order to show cause and makes this verification in behalf of himself and the other parties named in said order; that he has read the above and foregoing return and response and show of cause and knows the contents thereof and believes the same to be true.

/s/ J. K. CHEADLE.

Subscribed and sworn to before me this 14th day
of May, 1946.

[Seal]

THOMAS GRANGER,
U. S. Commissioner.

EXHIBIT A

In the Superior Court of the State of Washington
In and For Benton County

No. 7987

No. 99

ERNEST H. DIETRICH, RUTH DIETRICH,
JOE E. MILLARD, D. M. ALLEN, HENRY
DERANLEAU and RICHLAND IRRIGA-
TION DISTRICT, a municipal corporation of
the State of Washington,

Plaintiff,

vs.

HARLEY E. CHAPMAN, County Auditor of Ben-
ton County, Washington, and C. W. NESSLY,
County Treasurer of Benton County, Wash-
ington,

Defendants.

SPECIAL APPEARANCE BY PETITIONER
UNITED STATES OF AMERICA, UNDER
MOTION TO QUASH AND DISMISS

Comes now the petitioner, United States of
America, by and through Bernard H. Ramsey,
Special Assistant to the Attorney General, appear-
ing specially and for purpose of this motion only,
moves the Court to quash and dismiss the above
entitled proceeding upon the ground and for the
reason:

1. That the Court is without jurisdiction to enter-
tain said proceeding.

2. That the United States of America has not consented to be sued or to be joined as a part in this proceeding in this court or in any court of the State of Washington; that the court, therefore, does not have jurisdiction of the United States of America as a party herein.
3. That there is now pending in the District Court of the United States for the Eastern District of Washington, Southern Division, a proceeding entitled United States of America, Petitioner, vs. Clements P. Alberts, et al., Defendants, involving every issue presented to the Court in this proceeding, and in which said proceeding all parties herein are before said United States District Court.
4. That all issues sought to be presented by the plaintiffs through this proceeding can and will be adjudicated by the District Court of the United States for the Eastern District of Washington, Southern Division in said case of United States of America, Petitioner, vs. Clements P. Alberts, et al., Defendants, and that any relief sought by plaintiffs in this proceeding can be afforded to said plaintiffs in said proceeding [213] as is evidenced by the allegation of plaintiff's complaint herein and the certified copy of Motion for Leave to Intervene and Notice of Issue hereto attached and made a part hereof.
5. That the plaintiffs herein are without legal capacity to sue in this proceeding.

6. That no cause of action or suit is stated herein.

UNITED STATES OF AMERICA,
BERNARD H. RAMSEY,

Special Assistant to the Attorney
General.

March 28, 1946.

Copy hereof received today.

J. K. CHEADLE.

Filed March 28, 1946. [214]

[Title of Superior Court and Cause.]

CERTIFICATE

I, Bess Royer, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Special Appearance by Petitioner, United States of America, under motion to Quash and Dismiss, filed March 28, 1946, in the above entitled action as the same now appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 8th day of May, 1946.

BESS ROYER,
Clerk.

[Seal]

WILMA OLIVER,
Deputy.

[Title of Superior Court and Cause.]

DEMURRER

Comes now the defendants and demurr to plaintiffs cause or action for the reason and on the grounds that the complaint herein does not state facts sufficient to constitute a cause of action.

Dated this 5th day of March, 1946.

ANDREW BROWN,

Attorney for the Defendants.

Prosser, Washington.

Filed March 6, 1946. [216]

[Title of Superior Court and Cause.]

CERTIFICATE

I, Bess Royer, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court for the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Demurrer, filed March 6, 1946, in the above entitled action, and the same now appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 8th day of May, 1946.

BESS ROYER,

Clerk.

[Seal]

WILMA OLIVER,

Deputy.

[Title of Superior Court and Cause.]

ORDER OVERRULING DEMURRER AND
DENYING MOTION TO QUASH AND DIS-
MISS

The above entitled cause having come on for hearing on the 28th day of March, 1946, upon defendants' demurrer and upon the motion to quash and dismiss, made by the United States of America in its special appearance; and arguments on said demurrer and motion having been heard, the defendants being represented by Andrew Brown, the United States of America by Bernard H. Ramsey, Special Assistant to the Attorney General, and the plaintiffs by J. K. Cheadle; and this Court being fully advised in the premises;

Now, therefore, it is hereby ordered:

That said demurrer be and the same hereby is overruled, and that said motion to quash and dismiss be and the same hereby is denied;

That the defendants shall have ten days from March 28, 1946, to answer the complaint herein; and

That, in accordance with the request of counsel for the United States and the agreement of counsel reached in open court, said time to answer shall be extended, without further order of this court, to thirty days from March 28, 1946, upon the filing herein of a signed copy of a stipulation filed in United States, petitioner, v. Alberts, et al., Civil No. 128-99 and 199, in the District Court of the

United States for the Eastern District of Washington, effectively postponing the hearing therein on the petitioner's demurrers therein.

Done in open court this 11th day of April, 1946.

TIMOTHY A. PAUL,

Judge of the Superior Court.

Presented by:

J. K. CHEADLE,

Atty. for Plaintiffs.

Approved as to form:

ANDREW BROWN,

Atty. for Defendants.

Filed for record April 17, 1946. [218]

[Title of Superior Court and Cause.]

CERTIFICATE

I, Bess Royer, County Clerk, and by virtue of the laws of the State of Washington ex-officio Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the Order Overruling Demurrer and Denying Motion to Quash and Dismiss, filed for record April 17, 1946, in the above entitled action, as the same now appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 8th day of May, 1946.

BESS ROYER,

Clerk.

[Seal]

WILMA OLIVER,

Deputy.

Filed May 14, 1946. [219]

In the District Court of the United States for the
Eastern District of Washington, Southern
Division.

No. 128-99, 128-100

UNITED STATES OF AMERICA,

Petitioner,

vs.

CLEMENTS P. ALBERTS, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS RE ORAL
OPINION UPON CONCLUSION OF AR-
GUMENTS ON MOTIONS AND DEMUR-
RERS ON 6/1/46.

Be it remembered:

That the matter of argument of counsel upon motions and demurrers in the above entitled cases came regularly on before the Hon. Sam M. Driver, Judge of the United States District Court for the

Eastern District of Washington, beginning on Wednesday, May 15, 1946, at Yakima, Washington, and resumed on Friday, May 31, 1946, at Spokane, Washington; Mr. Bernard H. Ramsey, appearing as Attorney for the plaintiff; and Moulton & Powell, Mr. Charles L. Powell, of counsel, together with Mr. J. K. Cheadle, appearing for the defendants herein.

Whereupon, after the conclusion of argument of counsel, the Court made the following decision:

The Court: This matter has been so thoroughly and extensively argued with about five hours of argument here in addition to the argument we have had at Yakima, that the Court will merely adopt one side here and it will not be necessary to take a great deal of time in stating the Court's view.

In the first place, I think the motions directed against the state proceedings which the Court took under advisement at Yakima should be taken up first. The Court has gone quite thoroughly into this matter of the Federal Court enjoining proceedings in the State Court, and it seems to me that a Federal Court should not enjoin State proceedings unless it is necessary to protect property that is within the custody of a Federal Court, or to protect proceedings that are an action in rem or quasi in rem. The Federal Statute 28 U. S. C. A. 379 provides that an injunction shall not be issued by the Federal Court to restrain proceedings in State Court except in certain cases arising out of bankruptcy. [220]

There has been a well-defined exception grown up to that statute, another exception other than in bankruptcy proceedings, by judicial decisions, and that is known as the exception in the *res* cases, and is regarded as a rule of necessity to be sparingly applied. I think that is particularly apparent from the recent case of *Tousey vs. New York Life Insurance Co.*, 314 U. S. 119, in which Associate Justice Frankfurter wrote the opinion and detailed the history of this statute, and defined the exception which can be applied to its policy. He pointed out that it is a very well defined public policy announced by Congress in that statute that there shall be as little conflict and as much comity established as possible, at least as far as Federal Courts are concerned.

The only exception that could apply to that statute is the *res* exception. That is where an action in *rem* is brought in Federal Court and the Court will then enjoin any subsequent action or proceedings in State Court which would interfere with the Federal Court's jurisdiction over and control of the *res*.

This particular case which is before the Court is without question an action in *rem*. It is an action brought to condemn certain lands and properties of the irrigation districts and the owners of land within the districts. However, it seems to me that the *res* of this action does not go beyond the particular property which is covered by the condemnation action which is taken under the order of possession and declaration of taking in these cases.

The funds in the possession of the county treasurer, who is ex-officio treasurer of the districts, have not been covered in any way by these condemnation proceedings. They are not covered, as I understand it, by any declaration of taking. It is property that is not part of the res in this Court. That became fairly apparent when the Court asked the question and it could not even be stated what the amount of the funds was that remained on deposit with the county treasurer. And after all we must remember that these irrigation districts are not only corporations of the State of Washington, but they are municipal corporations of the State of Washington, and their officers in a sense are municipal officers of a subdivision of the State of Washington; and it is peculiarly appropriate, it seems to me, that the management of their affairs should be left to the State [221] Court jurisdiction insofar as it may be done without interference with the proceedings in this Court.

I might say this: I think that both sides concede here, or seem to concede at least, that regardless of whether these irrigation districts have been stripped of all of their assets so far as the condemnation case is concerned, other than the bare legal title as has been stated, nevertheless those irrigation districts are legal entities. They have never been extinguished as legal entities, and, certainly, they could not be extinguished because the circumstances have made it impossible to carry on their elections re-elect their directors.

I notice in ruling upon the demurrers of the Government in those state cases the Superior Court Judge for Benton County indicated that he regarded these old directors or holdover directors of these districts as de facto directors of these districts, and indicated that that is what that Court would hold. But, in any event, it seems to me these districts which have been brought into Court through action of the Government would have the right to defend the action of the dissolution; and they should have the right to use funds which are not in this Court as part of the res of these proceedings for the purpose of making that defense. Of course, it will be assumed, and I think should be assumed by this Court, that the Superior Court of Benton County will not properly and will not permit the assets of the corporations which may be under the state court's control to be wrongly used and dissipated improperly, and that that court will not seek to interfere with the res of these proceedings.

For the reasons stated, I do not think further elaboration is necessary. The motions of the Government for appointment of receivers for the irrigation districts and for injunction to restrain prosecution of the actions in the Superior Court of the State of Washington will be denied. As I understand it, there is actually in fact a separate motion for appointment of receiver and for an injunction as to both irrigation districts, there being two cases in Benton County which involve each of these districts.

Mr. Cheadle: Yes, your Honor. Is that not correct, Mr. Ramsey?

Mr. Ramsey: Yes.

The Court: Now, with reference to the demurrers to the amended answers [222] which have been just recently argued before the Court here, I think both sides should be complimented for the manner in which these cases have been presented. They certainly have been thoroughly presented and on the Government's side there is a very strong legal basis for the Government's position. It is a matter of cold logic for the Government's position. The Government's position is almost unanswerable, it seems. But we have here a peculiar situation. If there has been a case before where the Government has taken over the entire irrigation system and all of the lands of the system and all of the works and properties of the district in one stroke, as has been effected here, that case has not been called to the Court's attention.

It seems to me that it is unfortunate that this case having been pending here since February, 1943, over three years, that this basic question, which is a very difficult and trying and unique question, has not been decided by the Circuit Court of Appeals. I am not attempting to place the blame, certainly, but it would surely lighten the burden of this Court and the task of the litigants because it is a very difficult and unique situation that is presented here to me that has grown out of this peculiar situation.

I think that this litigation should be regarded as a whole or, I should say, interrelated as to each irrigation district.

The Government secured its order of possession in February, 1943. I don't think that the Government thereby took possession or that title passed or that that measured the time when the landowners were entitled to the compensation as of the value taking date; but it certainly did indicate very clearly the intention of the United States to condemn all of the lands and facilities of each of these districts and put in motion the machinery by which that was to be done. And regarding this litigation, the condemnation of each district as at least inter-related and a unit in a sense, my predecessor, Judge Schwollenbach, has already carried on or concluded many of the separate trials involving many of these original landowners, all of them except those that have conveyed by deed. In doing that, his memo as indicated by his ruling upon the amended answers clearly indicates that he adopted a certain theory and line of policy and it was tried in the cases involving the original theory and line of policy and it was tried in the cases involving the original owners.

As I read his memo, his conclusion was that the owners of the district, while, of course, the Government is taking only the fee title which includes everything that goes with the lands, that they were in a sense in a dual position, that they owned irrigated land with the water rights appurtenant thereto for which they were entitled to compensation; and that also in a sense as owners of land in the district they were in the position of stockholders in the district, that is, they were entitled to com-

pensation in their proportionate share of the assets of the district. The assets of the district which enter into and are necessary to the supplying of the water to the land, they are what Judge Swollenbach referred to, I believe, as the irrigation assets or assets adapted to and used for the supplying of water for the lands. They, I assume, Judge Swollenbach considered entered into and became a part of the value of the land and the Government compensated the owner for that when they paid him the fair market value of the land as determined by the jury.

Judge Swollenbach also took it, I assume, that as to the assets of the district which were not used exclusively for irrigation, that they did not enter into the value of the land as determined by the jury, that the owner was entitled to his pro rata share as to the value of those properties not used for irrigation.

As a matter of policy and for convenience, if for nothing else, Judge Swollenbach decided, and I think properly so, that it was not the proper thing to do to try out in each individual case the proportionate value to which each landowner would be entitled. That would involve, as he pointed out, having the assets determined over and over again by the jury in successive individual cases; and, of course, they would in all probability find difference values in different cases. But, as he pointed out in ruling upon the demurrers to the original answers, he felt that while the landowners were not entitled to receive compensation again for the assets of the districts used for irrigation, as that would be in

effect giving them double compensation, he thought that in all fairness they should have their pro rata share of the non-irrigable assets of the districts.

I suppose I am not bound by what my predecessor has done here but, it seems to me that in all fairness, that since this litigation is so far advanced, at least under this situation it is the fair and proper and equitable thing for me [224] to do to adopt and attempt to apply the formula of my predecessor since he has already acted upon it in these individual cases. I don't think it is fair to change the theory or change the method in the middle of this litigation, considering it as a whole. I can see that it will involve grave difficulties and will not be an easy thing to work out but that is a matter and a bridge that will have to be crossed when we reach it, I suppose.

I think if we may apply the formula—if we may call it that—of Judge Schwellenbach, that the demurrers should be overruled.

It is true that in the Richland case there is only a limited amount of property sold there that is not devoted to irrigation purposes and that it does not exceed the amount of the bond issue. But I think also that applying Judge Schwellenbach's formula even in that case the value of the non-irrigable assets of the district should be passed upon and determined by a jury, and then, if that is determined to be the proper thing to do—I am not passing upon that question definitely now—but if it is determined by this Court to be the thing to do, if they amount

to less than the bond issue and can be applied to the payment of the amount advanced by the Government to buy the bonds, it seems to me that at some stage of these proceedings that if the assets are not sufficient to pay what the Government has advanced, to pay off these bonds, that it should be determined definitely how much has been retired by application of the assets here and how much of an excess that the Government is entitled to that it might have a right to recover or which might be a lien upon other assets not involved in this proceeding.

Now. I think I indicated in the ruling on the motions for injunction and appointment of receiver that it is my view that these irrigation districts as defendants in these actions should be represented by those officers whom the state court decides are entitled to represent them; that the matter of liquidation of an irrigation district is primarily a matter for the State Court, and while I appreciate the fact that in a condemnation proceeding not only must the value of the property taken be determined but also the persons who are entitled to receive it, nevertheless, it seems to me, that in this situation the person entitled to receive the compensation is the irrigation district, a legal entity. And if I should attempt to determine who is entitled upon liquidation of that corporation [225] to its assets, I would be simply dissolving an irrigation district in Federal Court, which is not altogether necessary in a condemnation case or a part of it, as I view it. Certainly, if the Government took over the assets of a private corporation, we would not undertake

to pay the award to the stockholders. It would be paid to the corporation even though all of the property of the corporation might be taken in the motion, and it would be the duty then of the corporation to determine who is entitled to its assets; and I think that is the situation here. And, however, while it may not be necessary to say this, I am inclined to the view at this time that while the state court should determine who is entitled to the non-irrigation assets, that the Government should determine whatever award should be made for the payment of the bond issues. And I think also that the funds should be impounded in this court rather than to be paid directly to the directors of the districts or whoever is representing the districts, before the adjudication is made as to who is entitled to receive the funds.

Now, I have stated the Court's view on that for the reason that it seems to me, although I will be willing to hear from counsel for the defendants here if you care to be very brief, that in my view of the situation it would serve no useful purpose to permit individual landowners to intervene because under my theory of it they are represented by the irrigation districts.

Mr. Powell: That is right.

The Court: They have no legal title to the irrigation district property, and only in case that the districts are not legally and adequately represented or they are not properly represented should they intervene. But it would seem that with the adequate representation in these cases that the landowners

are not entitled to intervene, and upon that reason the Court will deny the motion to intervene. I will hear from you.

Mr. Cheadle: In view of the previous ruling of the Court, we do not wish to be heard upon your denial of the motion for leave to intervene.

The Court: I am going to Yakima tomorrow and will be there until about Thursday of next week. If the orders on my various rulings here have not been worked out by that time, I will be back in Yakima, Monday, June the 17th. I have a public utility condemnation case that is starting the 18th but I will be there by the 17th and from then on for probably two or three weeks, so that I would be available for presentation of these orders during those times.

Filed June 4, 1946. [226]

In the District Court of the United States for the
Eastern District of Washington, Southern
Division.

No. 128-99

UNITED STATES OF AMERICA,

Petitioner

vs.

CLEMENTS P. ALBERTS, et al.,

Defendants.

ORDER FOR DENYING MOTION
FOR LEAVE TO INTERVENE

This matter having come on regularly in its order to be heard before the above entitled Court, the

petitioner appearing by Bernard H. Ramsey, Special Assistant to the Attorney General, and interveners C. I. Wright and Mamie Wright appearing by and through Charles L. Powell and J. K. Cheadle, their attorneys, and the Court having considered the records and files herein and listened to counsel, and being duly advised,

Now therefore, it is hereby ordered that the motion for leave to intervene in the above entitled action be and the same is hereby denied.

Done by the Court this 26th day of June, 1946.

SAM M. DRIVER,
District Judge.

Approved:

BERNARD H. RAMSEY,
Of Attorneys for Petitioner.

Presented by:

CHARLES L. POWELL,
Of Attorneys for Defendant
Priest Rapids Irrigation
District.

Filed June 26, 1946. [227]

[Title of District Court and Cause.]

ORDER OVERRULING DEMURRER

This matter having come on regularly in its order to be heard upon the demurrer of the petitioner to the amended answer of the defendant Priest Rapids Irrigation District, petitioner appearing by Bernard H. Ramsey, Special Assistant to the Attorney General, and the defendants appearing by Charles L. Powell and J. K. Cheadle, their attorneys, and the Court having listened to argument of counsel and having considered the records and files herein, and being duly and fully advised in the law and in the premises,

Now therefore, it is hereby ordered that the demurrer of the petitioner to the amended answer of the defendant Priest Rapids Irrigation District be and the same is hereby overruled.

Done by the Court this 26th day of June, 1946.

SAM M. DRIVER,
District Judge.

Approved:

BERNARD H. RAMSEY,
Of Attorneys for Petitioner.

Presented by:

CHARLES L. POWELL,
Of Attorneys for Defendant
Priest Rapids Irrigation
District.

Filed June 26, 1946. [228]

In the District Court of the United States for the
Eastern District of Washington, Southern
Division.

No. 128-99 and 128-100

UNITED STATES OF AMERICA,

Petitioner.

vs.

CLEMENTS P. ALBERTS, et al.,

Defendants.

ORDER DENYING MOTION FOR APPOINT-
MENT OF TRUSTEE OR RECEIVER AND
FOR RESTRAINING ORDER

The petitioner's motion for appointment of trustee or receiver and for restraining order having come on for hearing on May 15, 1946, on this Court's order to show cause, the petitioner appearing by and through Bernard H. Ramsey, Special Assistant to the Attorney General, and the defendants appearing by and through J. K. Cheadle, their attorney, and the Court having heard argument of counsel, and being fully advised in the law and in the premises,

Now, therefore, it is hereby ordered that the petitioner's motion in No. 128-99 and No. 128-100 for the appointment of a trustee and/or receiver, and for an order restraining and enjoining the defendants from further prosecuting in the Superior Court of the State of Washington, in and for Benton County, the case of C. I. Wright and Mamie Wright,

husband and wife, and J. H. Evett, B. Salvini and Priest Rapids Irrigation District, a municipal corporation of the State of Washington, plaintiffs, vs. Harley E. Chapman, County Auditor, and C. W. Nessly, County Treasurer of Benton County, Washington, defendants, [229] being Cause No. 8035, and the case of Ernest H. Dietrich and Ruth Dietrich, husband and wife, Joe E. Millard, D. M. Allen, Henry Deranleau, and Richland Irrigation District, a municipal corporation of the State of Washington, plaintiffs, vs. Harley E. Chapman, County Auditor of Benton County, Washington, and C. W. Nessly, County Treasurer of Benton County, Washington, defendants, being Cause No. 7987, be and the same is hereby denied.

Done by the Court this 26th day of June, 1946.

SAM M. DRIVER,
District Judge.

Approved as to form:

BERNARD H. RAMSEY,
Attorney for Petitioner.

Presented by:

/s/ J. K. CHEADLE,
Attorney for Defendants.

Filed June 26, 1946. [230]

In the United States District Court for the Eastern
District of Washington, Southern Division

No. 128-99

THE UNITED STATES OF AMERICA,
Petitioner.

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation, et al.,
Defendants.

ORDER FOR JURY VIEW

This matter having come on for trial before a jury, and request having been made that the jury view the property to be valued and involved herein,

Now, therefore, it is hereby ordered that the jury be permitted and authorized to view the property involved in this action.

Done by the Court this 10th day of February, 1947.

SAM M. DRIVER,
District Judge.

Approved:

J. K. CHEADLE,
Of Attorneys for Petitioner.

Presented by:

BERNARD H. RAMSEY,
Of Attorneys for Priest
Rapids Irrigation District.

Filed February 10, 1947. [231]

[Title of District Court and Cause.]

RECORD OF PROCEEDINGS AT THE TRIAL

Before: Honorable Sam M. Driver,
United States District Judge.

Appearances:

Bernard M. Ramsey, Special Assistant to the Attorney General, of Yakima, Washington; June Fowles, Special Attorney, Department of Justice, of Yakima, Washington; for the petitioner.

Charles L. Powell, of Kennewick, Washington; J. K. Cheadle, of Spokane, Washington; for the Defendant Priest Rapids Irrigation District.

Be it remembered, that on the 10th day of February, 1947, the above entitled cause came regularly on for trial in the above court at Yakima, Washington, before the Honorable Sam M. Driver, Judge of said Court, sitting with a jury.

The Petitioner appearing by Bernard H. Ramsey, Special Assistant to the Attorney General, of Yakima, Washington, and June Fowles, Special Attorney, Department of Justice, of Yakima, Washington;

The Defendant Priest Rapids Irrigation District appearing by Charles L. Powell, of Kennewick, Washington, and J. K. Cheadle, of Spokane, Washington;

Whereupon, the following proceedings were had and done, to-wit: [234]

(A jury of twelve was duly impaneled and sworn.)

The Court: In view of the fact that this action will necessarily involve considerable expense to both sides here, it seems to me that it might be a wise precaution to have at least one alternate. If there is no objection to that the Court will proceed to install one alternate. I think one should be enough, however.

(Whereupon, J. R. Flanagan was duly impaneled and sworn as an alternate juror.)

The Court: I understand that arrangements have been made for the members of this jury to go down on the river and view the premises that are involved in this case, that is, as much of the premises and property of the Irrigation District as it is practical for you to see and that counsel on either side wish to point out to you. This is solely to give you some knowledge and acquaintance with the property that you're to deal with here, and it is to help you when you get the evidence and the testimony, to relate it to this property and know what the witnesses are talking about. The transportation will be provided, and you are to keep together at all times while you're on this trip to see the premises. You will be in charge of the Deputy Marshal, who will point out what you're to look at, and if either counsel [235] wishes you to see something you haven't seen, or wishes to direct your attention to something, he will communicate with you through the Marshal, that is, he'll tell the Marshal what he wants you to see, and he will point it out to you.

You're to keep together and not talk to anybody outside, or talk to the attorneys in the case. You're simply to go down there and look at what is shown to you, and use that knowledge later in connection with the case.

This might be a good time to give you the general instruction it is my duty to give at the outset of a case, and that is, you are to keep an open mind in the case until you have heard all the testimony on both sides. One side must necessarily go ahead, and then the other one. You must keep an open mind through all stages of the trial until you have heard all the evidence, the arguments of counsel, and the court's instructions, and the case has been submitted to you for determination. You are not during any recess of the court and on this excursion to talk between yourselves or to any outsider about it. Of course, that is particularly pertinent to these cases when you're permitted to separate and go home. Somebody might start talking to you about it, and you must tell him you're on the jury and can't discuss the case. I ask you also to avoid reading newspaper [236] accounts of this case, or listen to broadcasts about it. You can read other news and listen to radio news, but keep away from this case. You might be influenced by some reporter's idea of what the evidence was, and we want you to decide the case on the testimony in the court room here.

Is it stipulated between counsel that the view of the premises may be in accordance with the instructions of the court? If either of you have any sugges-

tions I would welcome them at this time. The record may show that the view may be as stated by the Court?

Both Counsel: Yes, your Honor.

The Court: Now, as to the mechanics of the case, when will the transportation be ready?

Mr. Isaacs: Our plan is to feed them. Transportation is ready at any time.

The Court: You don't want them to eat at 10:30, do you?

Mr. Isaacs: Well, it will be 11. It's quarter to 11 now; but there isn't any place to feed them at all down there.

The Court: Well, it is rather an awkward time to eat lunch, even for people who get up early, and I wonder if you couldn't have them meet for lunch some place about 11:30 and then go down after that? [237]

Mr. Ramsey: I might suggest to the Court that it is going to cut the time in which this view can be had considerably if we do that. That would mean we probably wouldn't get out until 12:30.

The Court: I don't suppose it would be practicable to take sandwiches for them?

Mr. Isaacs: That would take longer: It's about a two hundred mile trip, by the time we get back here.

Mr. Ramsey: It will be necessary to go on up the river to the Priest Rapids Power Plant and then back to the pumping plant, and if possible, on down the river further to the canals.

The Court: We can give the jurors an opportunity, then, to telephone home if they want to and tell them they will be gone for the day, and then you

can make arrangements to feed anybody who wants to eat at this time. I think it is best, too, to take the jurors down and bring them back here, and then after you get them back to the Federal Building here they may be excused until tomorrow morning at 10 o'clock, without coming back into a session of court here, but I think they should be kept together until they come back here. The bailiffs will be sworn.

(Whereupon, Mr. Isaacs and Mr. Smith were sworn as bailiffs to take charge of the jury and one alternate juror.) [238]

The Court: I might say here, members of the jury, that it has been quite a long time since this property was taken. What was the date of taking? That's agreed, isn't it?

Mr. Ramsey: Date of Declaration was May 12, 1944, however, I believe the government had taken over the property prior to that date.

Mr. Powell: There are, I believe, two different dates of taking.

The Court: The only thing I am interested in, it has been over two years since the property was taken. There may have been some changes in the property. You will just view it as it is pointed out to you, and either side will have an opportunity to call to your attention any changes that may have been made since the property was taken, so you can take that into consideration later on.

(Whereupon, a recess was taken in this cause until Tuesday, February 11, 1947, at 10 o'clock a. m.) [239]

Yakima, Washington, February 11, 1947,
11 o'Clock A. M.

(All parties present as before, and the trial was resumed.)

The Court: Gentlemen of the jury, we had some rather novel and difficult questions that arise in this case because of the circumstances of it, and it would be very difficult for you to follow the evidence here and apply the Court's instructions properly unless you were able to take some notes as you go along, as to what these various witnesses will testify as to the value of the different kinds and types of property down there, and for that reason the counsel have stipulated, that is, they have agreed, that you may have pads and take notes in this case. That is something that usually isn't permitted in these trials, although I think it should be. It is expecting you to have super-human memory to expect you to sit here and remember all these witnesses' testimony. I couldn't do it. In this case it is stipulated you may have pads furnished to you and take notes of the testimony as the case is submitted to you, and that you may take these notes with you to the jury room. However, at the recess and during adjournments the bailiff will take them from you and keep them for your use when you [240] consider the case. I think it might be well for you, so you won't have any difficulty getting your own pad back, if you will put your name on the top. The clerk will prepare these for you, and in the meantime, you may proceed with your opening statement.

Mr. Powell: May I approach the bench?

(Whereupon, the following proceedings were had by Mr. Powell and Mr. Ramsey without the presence of the jury and one alternate juror.)

Mr. Powell: I don't know if it makes any difference, but I don't think the jury is in the same order that we selected them yesterday. If counsel is agreeable, I got an extra copy of this, if you want to use it.

(Whereupon, counsel presented the Court with a copy of Washington Laws relating to Irrigation Districts.)

Mr. Ramsey: We each have a copy of that.

The Court: Well, I would like to have this, then.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: My attention has just been directed to the fact that the jurors are not seated in the same order they were yesterday. You should keep your same seats so if we have to refer to a particular juror we can do it.

(Whereupon the clerk called the roll of the jurors [241] and the jurors assumed their proper seats.)

The Court: All right, you may proceed. I might say, I think it is best for the jury not to take notes of either opening statement, neither the defendant's nor the government's, but only the testimony of the witnesses.

Mr. Powell: If your Honor please, counsel, and gentlemen of the jury. In this case, the government, the United States of America, is designated as the petitioner, and the Priest Rapids Irrigation District is designated as the defendant, that is, the principal defendant, and the contest in this case will be between the two. Your duties of course the Court will define to you as being to determine the values of the property that have been taken by the United States.

Now, the evidence that the defendant, the Priest Rapids Irrigation District, will introduce here will be substantially as I will try to detail it to you now, and if you find any variance between my statement to you and the evidence as actually introduced, it is, I assure you, an inadvertence and nothing intentional to mislead you, because my statement is not evidence. We will bring in the witnesses, first, we will, I believe, call Mr. Salvini, who has been on the board of directors of the Irrigation District since 1932, and he will detail to you the nature of the organization of the Irrigation [242] District, that is, it was organized about 1919; it didn't function as an Irrigation District to any extent until 1932, when it acquired the property that you saw yesterday, the power plant and the pumping station and the canals, and started to operate the power plant and the pumping station and to irrigate the lands under the canal.

At that time they irrigated from the canal, and there were individual pumping systems installed there and used there even on lands in the District.

At that time also the District started to sell power commercially, generated at the power plant. Then in nineteen, about thirty four, there were some changes in the number 2 generator in the plant, that is, in the number 2 turbine down in the pit. That is the one that was nearest the door that we went in, and in 1941 there was some difficulty with the generator, that is, something happened to the generator, the number 2 generator, and in 1940 or 1941 a new generator was installed in the number 2 generator. That is the machine that was on the top floor where we first went in. That is the generator, and the floor below, where we looked through the manhole in the number 1 machine, is the thrust bearing, and in the lower floor the turbine is located, the wheels that run the machine. [243]

We will have a witness here who has done considerable engineering work in planning and reconstructing a portion of the power canal, to get the maximum flow of water at the power plant during the low stages of the river. The river as you saw it yesterday, I believe the evidence will show is at almost extreme low water, and that was the reason only one of the generators was being operated. This witness will define to you the methods used in getting the maximum flow of water in the canal at the low stages of the river, and the possibilities of getting a maximum flow during low stages, so that when the head is high, that is, the difference between the water in the canal and at the tail race, that a maximum amount of power may be generated.

We will also have witnesses who will explain how the power plant operates for the benefit of those of you who haven't had the experience of operating or being around a power plant a great deal, and how the power is generated and transmitted, and how it is taken off the line to go to the pumping station, and we will also have evidence to show the operation of the pumps, how they operate, and the amount of water and the lift in connection with the discharge pipe, and the length of the canal and how the distribution system was operated.

Now, I anticipate that there may be a question in [244] connection with how some of these values are to be determined and divided. We will endeavor to introduce the evidence to you in the simplest form we can, to help you analyze it, because we realize that to you people this until yesterday was an entirely strange case, and we will endeavor to illustrate as best we can the various elements that we consider of value in determining the value of this power plant and this irrigation system and this transmission line. We are taking the position that from the headworks of the canal, that is, the intake of the power canal, down to the very end of the distribution lateral system, that there is a value there, a substantial value of the Irrigation District properties, that our experts will place at I believe between half a million and a million dollars, and we will show you the production records of power of the last year of operation of the Irrigation District, and we will show you and endeavor to illustrate to you how the willing, informed buyer would investi-

gate the possibilities of doing further work on this power canal and thus generating additional power, and how that would result, and what the income therefore would be from that work.

The details of the evidence will be also given, I believe, as to the cost, that is, the reproduction cost and the depreciated value of a lot of the items that were [235] there that you saw yesterday. We will endeavor to introduce these in exhibit form that will be easily understood and we will submit, with the Court's and counsel's permission, copies for your examination during the course of the trial. Thank you.

The Court: As soon as the Clerk gets the pads ready we will start with the first witness. I presume it may be stipulated here that the defendant will proceed first with the presentation of its proof of the case, that not having anything to do, however, with the rule of the burden of proof, simply that the defendant will proceed first?

Mr. Ramsey: The government so stipulates.

Mr. Powell: May I ask if it has been agreed as to the date of taking of this property?

The Court: There are several dates, that is, part of it was taken at one time, part of it another. I wonder if we could agree as to those dates here?

Mr. Ramsey: I assume so, your Honor. Frankly, I am not too well informed as to these various dates.

The Court: Well, perhaps we had better just make that a matter of proof, then.

Mr. Ramsey: I think there will be no controversy at all on the matter. It is just simply that I

am not informed as to the particular dates the various pieces were taken over. [246]

Mr. Powell: I think, if your Honor please, if I may state my understanding of the dates, and perhaps Mr. Fuller may be able to corroborate it, that the irrigation system, that is, the pumps, the main canal, and the lateral system, were taken over by the government before the commencement of the irrigation season in 1943.

The Court: Was that about April, 1943?

Mr. Powell: Yes, your Honor, April 1, 1943, and that the possession of the power plant was taken at noon on October 1, 1943.

The Court: Well, if that isn't stipulated it will probably be best to have one of your witnesses so testify. I suppose one of the directors will so testify, and if it isn't to be controverted it will be in the record.

Mr. Ramsey: The government is prepared to stipulate, if the Court please, that the dates mentioned by counsel, that is, April 1, 1943, as to the distribution system, and October 1, 1943, as to the power plant, is the actual dates the government took possession of the properties.

The Court: The record may so show that, and the jury will consider it as evidence. You may call your first witness, then.

Mr. Powell: May I ask if this may be agreeable to [247] your Honor and counsel? Mr. Yeager is here with some records from the Priest Rapids power plant, and it will be calling him a little bit out of order to have him put on production records

of the power plant at this time, but if I could call Mr. Salvini, and have give his first testimony, and then interrupt?

The Court: You may call a witness out of order if you wish to get through with him first, the witness who has the production records.

Mr. Powell: While he's getting them in here, I might call Mr. Salvini.

The Court: Yes, all right.

B. SALVINI

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. Your name is B. Salvini?

A. B. Salvini.

Q. Be sure you speak distinctly enough so all the jury can hear you, Mr. Salvini. Where do you live?

A. I live in Yakima.

Q. And where in Yakima?

A. 107 South 11th Avenue.

Q. 107 South 11th Avenue?

A. Correct.

Q. How long have you lived in Yakima? [248]

A. Since the 19th of May, 1943.

Q. Where did you live before that?

A. At Hanford, Washington.

Q. What did you do at Hanford?

A. Oh, I was farming, mostly.

Q. When did you first move to Hanford?

(Testimony of B. Salvini.)

A. Oh, I moved there around the month of October, 1917.

Q. How many acres of farm land did you have there?

A. Well, about fifty acres that I was farming.

Q. Now, were you connected with the Priest Rapids Irrigation District? A. Yes.

Q. Are you now? A. Yes.

Q. What is your capacity now?

A. I'm chairman of the Board of Directors.

Q. And you are a director? A. Yes, sir.

Q. How long have you been a director of the Priest Rapids Irrigation District?

A. Well, I think it is since 1932; if I remember right, it is.

Q. How long have you been Chairman of the Board?

A. Since that time—no, I was Chairman of the Board I guess it is in '36 or '38. [249]

Q. Where is the Priest Rapids Irrigation District irrigated lands?

A. The land of the Priest Rapids Irrigation District lays down north of the canal that comes out from Coyote, and runs clear down below Hanford, and is in Benton County.

(Whereupon, map of Columbia River and canal was marked Defendant's Exhibit No. 1 for identification.)

Q. Mr. Salvini, I hand you defendant's Identification number 1, and ask you if you know what it is? A. Yeh, that's a map of—

(Testimony of B. Salvini.)

Q. Just state yes or no. A. Yes.

Q. And what is it?

A. Well, it is a map that shows contour of the Columbia River up here from up above the power house at Priest Rapids clear down below Hanford, and some of the section land laying from Priest Rapids clear down to below Hanford, that is south of the canal.

Q. Does it show the main canal?

A. It shows the main canal, the existing canal that there was there in 1943, from Coyote Rapids down to the end of the canal, down below Hanford.

Mr. Powell: We offer the identification in evidence.

Mr. Ramsey: May I ask the witness one question first? [250]

Mr. Powell: Yes, surely.

Mr. Ramsey: Does it also show the location of the Priest Rapids power plant and of the pumping station?

The Witness: Yes.

Mr. Ramsey: By which the water was pumped on to the land of the Priest Rapids Irrigation District?

The Witness: Yes.

Mr. Ramsey: No objection to the exhibit, except as to the legend appearing on the lower left hand corner. I have no objection to the scale appearing in the lower right hand corner, but I do object to the legend appearing on the lower left hand corner.

The Court: May I see it, please?

(Testimony of B. Salvini.)

Mr. Powell: I think that can be removed; that is perfectly all right to remove that, your Honor.

The Court: The defendant's identification 1 will be admitted with the understanding that the Clerk will remove the legend appearing in the lower left hand corner of the map.

(Whereupon, Defendant's Exhibit No. 1 for identification was admitted in evidence.)

Mr. Powell; Now, may I ask leave to call Mr. Yeager out of order at this time?

The Court: Yes, you may do that. [251]

(Whereupon, the witness Salvini was temporarily excused from the witness stand.)

SILAS E. YEAGER

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. Your name is Silas Yeager?

A. Yes, sir.

Q. Where do you live, Mr. Yeager?

A. At Priest Rapids.

Q. And what do you do there?

A. In the capacity as an operator of the hydro-electric station.

Q. Will you speak just a little louder, please? You're an operator for the Pacific Power and Light Company?

A. That's right.

(Testimony of Silas E. Yeager.)

Q. And you operate the Priest Rapids Power Plant? A. That's right.

Q. Who is the chief operator there?

A. At the present time there isn't any chief operator. Whoever is on shift at the time is the chief.

Q. By whom are you now employed?

A. Pacific Power and Light Company.

Q. How long have you been an operator of the power plant?

A. On May 14 it will be six years.

Q. Then you started in May, 1941? [252]

A. That's right.

Q. Have you resided there all the time?

A. Since May 14, 1941.

Q. And what does an operator of a power plant like that do?

A. Well, he has various work. He's responsible for the condition and operation of the machines. He's responsible for the load, and he's responsible for the general appearance and condition of the place.

Q. Do you read the meters? A. Yes.

Q. What meters are they?

A. They are kilowatt hour meters, ampere meters, and volt meters.

Q. Where are they located?

A. Kilowatt hour meters are located on the back of the instrument boards, and the ampere meters and volt meters are located on the front of the panel.

Q. Do you make any other readings?

(Testimony of Silas E. Yeager.)

A. Yes, we read the river elevation gauge and the canal elevation gauge, of the fore bay and the tail race.

Q. What do you do about the gates?

A. The gates?

Q. Yes.

A. While we're operating under normal conditions the gates and the generators are operated under what we call a locked load. [253]

Q. Under a what?

A. A locked load, a locked generator. The generators are set on a load stop. They come open to so far, but if a breaker opens and the speed of the generator increases that automatically closes the governor, or shuts the governor down, and that closes the gates, and it is the operator's job to see that we're back on the line as soon as possible.

Q. Now, there are three sets of gates, aren't there?

A. Yes, head gates.

Q. There is a head gate, is there, in the canal?

A. There's no head gate in the canal.

Q. No, I mean there is a gate at the end of the canal, before the water gets into the canal?

A. That's right.

Q. What is that?

A. That's what we call a head gate.

Q. And how is it operated?

A. By a direct current motor on a mechanism that raises the gates on a worm gear, and they can be operated by manual labor, or they can be raised and lowered by this direct current.

(Testimony of Silas E. Yeager.)

Q. And is there a gate below the power house too, in the power house? [254]

A. At the turbines.

Q. Is there a gate below the turbines?

A. No.

Q. There is no gate below the turbines?

A. No gates below the turbines.

Q. Where is the second set of gates?

A. Well, the first gate is the one that comes in where the water enters from the fore bay into the turbine flume. At that particular station they have what they call open flume turbines.

Q. Are those the big pits we looked into yesterday?

A. That's the big pits you looked into yesterday, and they have what is known as wicket gates on the turbines.

Q. Is that what the governor controls?

A. That is what the governor controls.

Q. So when the governor shuts down the generator, it closes these wicket gates and doesn't let so much water in? A. That's the idea.

Q. And that's what you have to watch, too?

A. That's practically automatic. The principal thing you have to do, when those gates are once closed, that you are to open them and see the governor—that is, open them so you can get your speed, or once you're synchronized to the line, you can open your gates and increase your load.

Q. And are there another set of gates? [255]

A. That's all.

(Testimony of Silas E. Yeager.)

Q. Now, when you first started in at the power plant in 1941 were two generators in operation then?

A. There was not.

Q. And what was being done with one of the generators?

A. There was one generator in operation, and there was a new generator being installed.

Q. A new generator being installed?

A. That's right.

Q. In 1941? A. In 1941.

Q. Which was the new generator?

A. It is the generator, G. E., General Electric, designated as number 2.

Q. That is number 2 generator? A. Yes.

Q. Where is that with reference to the door, as you enter the power plant?

A. Just on the right as you enter the big door.

Q. And you call the other generator, the one on the north or west end, the number 1? A. Yes.

Q. And that is what kind?

A. Allis Chalmers.

Q. Allis Chalmers. Have you been down in both of these pits, Mr. Yeager? A. Yes, sir [256]

Q. Have you inspected the machinery inside?

A. Yes, sir.

Q. And did you during the year 1943?

A. During the year 1943? Yes.

Q. You did inspect the turbines and the wicket gates in both pits? A. Yes.

(Testimony of Silas E. Yeager.)

Q. What was the condition of them at that time?

A. They were in operating condition.

Q. Well, were they—did they show, or did you notice, or was there evidence of any wear?

A. Nothing to exceed any more than normal wear. They weren't new; after being used for several years, why, they couldn't be new, so they would have to show some wear.

Q. They did show some wear?

A. Some wear, but nothing that needed repair, that is, so far as the wheels are concerned.

Q. By wheels you mean the water wheels inside the turbines? A. That's right.

Q. Can you get inside of them and see them?

A. You can get inside of one of them, the number 2 machine.

Q. And can you see the other one from the outside? [257]

A. Yes, you can see the other one from the outside, that is, being down right alongside the turbine you can see it when the gates are open.

Q. Now, did you—were you there when they first put the number 2 generator into operation?

A. Yes.

Q. How did it operate?

A. On June 20 that machine was started, and it run for, I don't remember whether it was put on the line, I don't think it was put on the line. It was for a test run, it was run idle. They were shut down for the reason that they was mis-aligned at the time it was put in, so they made a re-adjustment on the

(Testimony of Silas E. Yeager.)

alignment of the generator, on the bearing, and it was put into operation on the last part of June or the first part of July, I can't give you the exact date.

Q. That is 1941? A. That is 1941.

Q. Has it been operating since that time.

A. It has.

Q. And what about the other machine? Has that been operating continuously also?

A. No, it hasn't been operating continuously. It's been operating continuously at any time that we have water to operate it. [258]

Q. And the number 1 generator was shut down yesterday. Why was that?

A. Insufficient water.

Q. Insufficient water? A. That's right.

Q. And can you just explain why it is that when there is insufficient water you have to shut down the generator?

A. When the river is at a low stage, it will not come in the head of the canal, we have a gravity flow canal, and if there was any provisions, they're not there now, for the water to come into this canal, just whatever comes in from the river; when the river reaches a low stage, the canal is at such an elevation that it just won't come into the canal.

Q. Can you state whether, when the jury saw the river and the canal yesterday, whether the water was at the low stage? A. Not at extreme low.

Q. How low is extreme low stage?

A. Your extreme low would be an elevation of about 407.6.

(Testimony of Silas E. Yeager.)

Q. 407.6? A. That's right.

Q. That is on your reading in the river, is that right? A. That is the reading in the river.

Q. And what does that mean? [259]

A. That is feet above sea level.

Q. And is that the elevation that's extreme low water of the surface of the river below the power plant?

A. The surface of the river at the breakwater, just above the power plant.

Q. Is that higher or lower than the water in the tail race?

A. That's higher than the water in the tail race.

Q. And what was the reading yesterday? How far were you from extreme low water?

A. Yesterday, if I remember right, the elevation of the river was 409.10.

Q. So, then, you're about a foot and a half from extreme low water right now, is that right?

A. That's right.

Q. And how often do you make these readings?

A. We read the river gauge three times a day, at midnight, at eight in the morning, and at four in the afternoon.

Q. How often do you read the canal level?

A. Every hour.

Q. There is a measuring board in the canal, is there not? A. That's right, in the fore bay.

Q. What do the figures on that indicate?

A. That's plus 400; the numbers on that gauge plus 400 is above sea level.

(Testimony of Silas E. Yeager.)

Q. The top number on the board was, I [260] believe, 45, is that correct?

A. I believe so.

Q. And that line is supposed to represent 445 feet above sea level? A. That's right.

Q. Now Mr. Yeager, have you had any difficulty of operating either of these generators? That is, do they operate all right now? A. They do.

Q. And is there anything wrong with this number 1 generator?

A. There is nothing wrong with the number 1 generator.

Q. And is there anything wrong with the wheel inside, that is, the turbine? A. No.

Q. What about the number 2?

A. There is nothing wrong about that either. It was operating when I left the station this morning.

Q. Is that the same situation that existed in 1943?

A. That's the situation in 1943, except that number 1 generator was not running, and it was no fault of the generator that it wasn't running.

Q. I see. Do you know what changes have been made in the power plant since 1943? A. Yes.

Q. What changes have been made? [261]

A. There has been one new governor added, or replaced, the original governor on the number 1 machine, and the wiring in the station has been changed to some extent, that is, the local or the 2300 volt feeder has been changed, that is the local, and I guess that—except for the water system, there has been added for domestic use a chlorinator.

(Testimony of Silas E. Yeager.)

Q. What about the water system—is that a very big change?

A. Well, it was. Before we drank the water out of the canal. Now the personnel can drink pure water, as pure as chlorine can make it.

Q. Now you have a chlorinator there?

A. That's right.

Q. That you use to chlorinate the drinking water you get out of the canal?

A. That's right.

Q. What kind of a governor was there on the number 1 generator in 1943, before the change?

A. Well, I can't say as to exact name plate; there was no name plate on it, but presumably it was an Allis Chalmers.

Q. And now what kind of a governor do you have?

A. A Woodward.

Q. W-o-o-d-w-a-r-d?

A. That's right.

Q. And is that the same kind of a generator you have in both machines? [261]

A. Governor, you mean?

Q. Governor.

A. Yes.

Q. Now, Mr. Yeager, do you have your records here showing the readings of the gauge in the river?

A. Yes, I have.

Q. Can you give us the readings of that gauge for the years of 1944, 1945, and 1946?

A. I believe so. I can give it for 1945 and 1946, and part of 1944, I am sure.

Q. And you also have your records showing the meter readings so that you can give us the production of power at the plant?

A. Yes.

(Testimony of Silas E. Yeager.)

Q. What records is it that you have?

A. I have the record from October 1, 1941, until the present date, and that was since the Pacific Power and Light Company took over, and I have a few records for the year of 1940, 1939, and 1936 and '35 and '34.

Q. Do you have the '42 and '43 log sheets?

A. No, I haven't.

Q. Did you make entries on those log sheets yourself? A. Yes.

Q. Would you recognize the log sheets if you saw them now? A. I would. [262]

Q. The records that you have brought here to-day, Mr. Yeager, are in whose handwriting?

A. They're in the operator's handwriting.

Q. Does your handwriting appear on them?

A. On some.

Q. And are they original records? A. Yes.

Q. And when were the entries on them made?

A. On the daily log sheet, was made hourly.

Q. Would you get, please, Mr. Yeager, the log sheet which shows the river gauge readings? You have it here in the courtroom, haven't you?

A. Yes.

Q. Would you come down from the stand and get it, please?

(Whereupon, the log sheet consisting of two pages was marked Defendant's Exhibit No. 2 for identification.)

(Testimony of Silas E. Yeager.)

Q. All right, Mr. Yeager, the readings start when?

A. The river elevation we have that I have here starts on the 25th of May, 1944, and they run through until February 10th, which was yesterday.

Q. Now, in the book that you have, the records are made daily, are they not? A. Yes. [263]

Q. And is there an entry there showing the maximum and the minimum river elevations?

A. Yes, there is.

Q. And the average river level during the day?

A. Yes.

Q. Now, does your record also show the day on which the maximum occurred, and the day on which the minimum occurred?

A. No, in this book here shows only the average level for the day; that is, the river. It shows a maximum of the month, for the month, but not for the day.

Q. That's what I mean, a maximum for the month, and a minimum for the month?

A. Yes.

Q. It shows that, does it, and also the average?

A. Yes.

Q. For the month? A. Uh huh.

Mr. Ramsey: May I inquire whether it is the purpose of counsel to introduce the records as to the river levels for the years 1942 and 1943?

Q. I don't think they are available, are they, Mr. Yeager? A. The river levels for 1942?

Q. And 1943? A. No. [264]

(Testimony of Silas E. Yeager.)

Q. When did you start keeping this record?

A. This record was started in May, 1944.

Mr. Ramsey: There have been no records kept of the river levels prior to that time?

A. Not that I know of. There may have been, but I can't vouch for those.

Q. (By Mr. Powell): Will you take your book Mr. Yeager, and start with the month of June, 1944, and give us the maximum for the month, and the day on which it occurred?

A. The maximum for the month of June occurred on the 17th of June, and the maximum elevation was 410.3.

The Court: What was that number?

A. 410.3.

Q. Well, what does that mean. 410?

A. 410 feet, and three-tenths of a foot above sea level. That's 410 feet and then three-tenths of a foot.

Q. That was a foot and what?

A. A foot, and a little over three inches.

Q. Isn't there a correction to go with that figure, Mr. Yeager?

A. Well, I don't believe there is. What do you mean by correction?

Q. Well, may I ask if that is the reading from the gauge?

A. That is the reading from the gauge, yes. All these entries here is plus 400 feet. We just [265] took the actual gauge reading, there is 400 feet added to it, that we don't put down, of course.

Q. Is that at the intake?

(Testimony of Silas E. Yeager.)

A. No, that's the river reading. That elevation was given to us by the U.S.G.S.

Q. Let's turn to the month of July, Mr. Yeager. What was the maximum during the month of July?

A. The maximum river?

Q. Yes. A. It was 407.8.

Q. And what was the minimum during the month? A. The minimum? 403.9.

Q. That is a lower figure than you've given us for the low river readings. A. Couldn't be.

Mr. Powell: Well, if I may make a statement to counsel and your Honor, when I investigated this, it was my understanding that these readings had to be corrected by adding a certain figure. At this particular time the witness's figures do not agree with my tabulation.

The Court: Is this supposed to be the same figure that you said yesterday was 409.1?

Mr. Powell: Yes, and at almost extreme low water.

The Court: It shows lower in June and July than it was yesterday, then, according to his figures?

A. There is an error [267] here, that's right. Now, to these gauge readings here that is in this book to a certain time should be 407.25 added to it.

Mr. Powell; Now, I will ask you, I don't believe we'll finish before noon, during recess will you take this tabulation, defendant's identification 2, and compare it with your book, and determine whether the tabulation is correct?

The Court: Yes, he can do that during the recess, and get it straightened out.

(Testimony of Silas E. Yeager.)

Direct Examination

(Continued)

Q. Now, Mr. Yeager, do you have the meter readings at the power plant for the years, by months, for the years of 1942, '43, '44 and '45?

A. I have the meter readings that I could vouch for from 1943.

Q. From 1943 on? A. On up, yes.

Q. And would you recognize the daily log sheets for 1942, Mr. Yeager? A. Yes.

Q. I hand you the log sheets, and if your Honor please, if counsel has no objection, I see no reason to burden the record with these original entries. There is a sheet for every day of the year, and we have a take-off by months which I think will serve our purposes. [267]

Mr. Ramsey: May I ask who prepared the take-off?

Mr. Powell: I can't tell you now, but I'll find out. I'll be glad to have it compared.

A. (Witness): This is the only record that there is of the operation of the District.

Q. (By Mr. Powell): That is the original record?

A. That is the original record, and as far as I know, the only record.

Q. Does your name appear on that sheet?

A. It does, sir.

Q. And approximately how many sheets does it appear on?

(Testimony of Silas E. Yeager.)

A. It should appear on every sheet.

Q. You were working seven days a week, were you? A. That's right.

The Court: That is a record of power production is it?

Q. Yes, is that right, Mr. Yeager?

A. Yes.

Q. This shows the power produced at the plant?

A. That is right.

The Court: Where records are as voluminous as this, you can introduce compilations, if you show they are correct compilations, and you made them, as I understand it, rather than burden the jury with all this detail. [268]

Q. What do these sheets show, the log sheets show, Mr. Yeager?

A. They show the line voltage, they show the kilowatts that went out on the 69,000 line, and they show the amperage, the alternating current amperage of the number 2 generator, and they show, this one in particular shows the kilowatt hours metered from the number 1 generator, shows the exciter direct current amperes and the voltage of the exciter, and then it shows the Coyote—wait a minute—it shows the transformer meter, and that is by the hour, and then at midnight it shows the meter readings of each meter that was read in the station, that is the kilowatt hour meter.

Q. Now, how many different meters are there?

A. There are—you mean kilowatt hour meters?

Q. Kilowatt hour meters.

(Testimony of Silas E. Yeager.)

A. There's four different kilowatt hour meters.

Q. What are they?

A. There is the kilowatt hour meter that is on the 6900 transformer, that registers the amount of kilowatts that goes out on the 6900 highline, and there is the kilowatt hour meter that registers the production of each generator, the number of kilowatts each generator generates, and there is the kilowatt hour meter that feeds to Beverly, that's on a 6600 kilowatt, or 6600 watts. [269]

Q. Four meters?

A. Yes, there's five, there's one on each generator.

Q. One on each generator makes two?

A. Yes.

Q. And then your over-all meters.

A. Then your 6900 kilowatt meter, and then your Beverly meter, and then we have what they call an "in" meter, that registers the kilowatts fed into the station, if any comes in.

Mr. Powell: Now, I might state to counsel and your Honor that mention is made here of the Beverly Line. It is my understanding that the Beverly line is not involved here, that the Pacific Power and Light owns the line that runs from Priest Rapids to Beverly, and there is a tower that goes across the river just out of the plant; that's correct, isn't it? Witness: Yes.

The Court: All right.

(Testimony of Silas E. Yeager.)

Direct Examination

(Continued)

Q. Can you tell from the records you have there the total number of kilowatt hours by months produced by the Priest Rapids Power Plant in 1942? A. Yes.

Q. From that record you have there?

A. Yes. [270]

Q. And so that you may testify about it personally, could you compare that and give it to us?

A. Yes.

Q. Now, do you have the same record for 1943, or '44, '45 and '46? A. At——

Q. I mean, you have them for 1944, 1945 and 1946?

The Court: You want similar compilations for those years, is that correct?

Mr. Powell: Yes, your Honor.

The Court: If this is a convenient place to stop, we'll recess now until 1:30.

(Whereupon, a recess was taken in this cause until 1:30 o'clock p.m.)

Yakima, Washington, February 11, 1947

1:30 o'Clock p.m.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Ramsey: If the Court please, before the jury comes in, I simply want to have my engineering witness [271] sit at the counsel table with me. Counsel has no objection, and my knowledge of engineering matters is so limited that I would like to have the benefit of his knowledge.

The Court: I see no objection to that, at both counsel tables. Each one of you can have one or two engineering witnesses with you. You may bring in the jury.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

SILAS E. YEAGER

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Mr. Powell: Before the noon recess, your Honor, I believe we were going through the record to show the river elevations.

The Court: Yes.

(Testimony of Silas E. Yeager.)

Mr. Powell: I would like, if I may, to have Mr. Yeager identify the book, and then have a tabulation made of some more data that appears in the book, and that will save introducing the book in evidence.

Mr. Ramsey: The government has no objection to that procedure, your Honor. I assume that will be connected up by a statement of who makes the tabulation [272] from this particular source.

Mr. Powell: Yes.

Direct Examination
(Continued)

By Mr. Powell:

Q. I hand you again the book containing the information which you testified to, Mr. Yeager. Does that contain also additional information about water stages? A. How's that?

Q. Does that also contain additional information about stages of the canal and the water in the tail race?

A. It contains the elevation of the canal at the fore-bay, and it also contains the tail race elevation and the operating head, in this book, as an average for the twenty-four hours.

Q. Now, you say the fore-bay? A. Yes.

Q. That's the water in the canal?

A. That is the water in front of the trash racks at the head gates.

Q. At the power house?

A. At the head gates in the canal.

(Testimony of Silas E. Yeager.)

Q. And the other reading you refer to is the water in the tail race?

A. In the tail race, as it comes out from the draft race in the turbines.

Q. And the difference between the two is called what? A. The head, the operating head. [273]

Q. The operating head?

A. That's what we call it.

Q. And the entries in the book are made by you and the other operators? A. That's right.

Q. I believe you have previously identified the sheets designated as referring to the year of 1942?

A. Yes.

Q. Would you glance through them to be sure that they all refer to that same year?

A. Yes, they're all dated 1942, or those that I look at, each month.

Q. Will you refer to the sheets indicating the year 1943, Mr. Yeager?

A. They're 1943, to October 1.

Q. Until October 1? A. Yes.

Q. Those are the sheets, are they, for the two years of '42 and '43 up to October 1, that show the meter readings?

A. That shows the meter readings.

Q. What does that show with reference to the output of the plant?

A. That shows the current, or kilowatt hours, that went out on the 66,000 K.V. line, and it shows the revenue or [274] kilowatt hours that went out on the Beverly line, or Beverly feeder, and it also shows the amount of power that was used at the

(Testimony of Silas E. Yeager.)

Priest Rapids station, and it also shows the current generated by the different—each of the generators in the plant.

Q. Does it also show the power that was used for pumping during the irrigation season?

A. It does on some, not all of them. Any time that Coyote was pumping it will show on these vouchers.

Q. Would you mind referring to the year of '42, to ascertain whether it does show during the irrigation season?

A. Yes, it does, starting on April 30, and that will run through until about the first of September, along in there. It shows through from the 30th of April, when they started the Coyote pumps, until they were finished pumping and was shut down for the season on September 1st.

Q. Now, Mr. Yeager, I'm handing you four different packages of sheets. Would you mind telling what they are?

A. They're the daily log sheets of the Pacific Power and Light Company after it took over operation at Priest Rapids.

Q. That is, from October 1, 1943, on, is that correct? A. That's right.

Q. And what do they show?

A. They show the kilowatt hours on the 66 K. V. line, and [275] they show the output of power that goes to Beverly, then it shows a net, the kilowatts that go on the 66,000 K. V. line, plus what goes to Beverly, and it shows what we used as a station service, and it shows the river level, the river eleva-

(Testimony of Silas E. Yeager.)

tion, the canal elevation, and the tail race, and also the head. It shows bus voltage frequency, direct current amperage, and direct current voltage, and it shows the alternating current amperage, and it shows what each generator generates during the hour, the meter readings, and the different—I'll retract that; it doesn't show of each generator, just only when them generators are running, but it shows the meter readings per hour each hour, and then it shows the weather conditions and whatever comes up in the normal operation of the station.

Q. Then you can tell from the sheets that have been kept as a daily log sheet since October 1, 1943, the total power output from the Priest Rapids plant, is that correct? A. Yes.

Q. And also—well, there was no power used at Coyote during that time, was there?

A. No, not after the company took over.

Q. And do you know who prepared those records? A. The operator.

Q. And you were one of them, were you? [276]

A. I was one of them.

Q. Do you recognize those as being the original sheets that were made up at the time?

A. Yes, they are.

Q. Just glance through them all; you don't need to look at each one individually, but if you will just glance through them to be sure they are the originals?

A. Yes, I would say those are the originals.

Mr. Powell: That's all, your Honor.

(Testimony of Silas E. Yeager.)

Cross-Examination

By Mr. Ramsey:

Q. Mr. Yeager, you stated you were an employee of the P. P. & L. Company? A. Yes, sir.

Q. Now, is the Pacific Power and Light operating the Priest Rapids plant as owner, or on lease, or on behalf of, as an agent for someone else?

A. Well, I could only answer that on hearsay.

Q. Well, as a matter of fact you know, don't you?

A. Not being in an office end of it, why, I would only know from hearsay, and I would say on contract, that is, they leased the station.

Q. I didn't understand your statement.

A. They leased the station, rent the station.

Mr. Powell: They leased the station.

Q. Now, as a matter of fact, they're operating that for the [277] United States Government as contractor, aren't they? Aren't they operating under a contract for the United States Government?

A. The way I understand it is that they rent the station and they pay so much rental for it.

Q. At the time that you took the station over there, that is, at the time the P. P. & L. took over the station, which I believe you stated was October 1, 1943, is that right, that the P. P. & L. took over the station? A. Yes.

Q. You were there earlier than that, in May, 1943? A. 1941 I went there.

(Testimony of Silas E. Yeager.)

Q. Or '41, yes. Now, you stated that there were certain changes made there, one governor was added? A. One governor was replaced.

Q. And why, if you know, was the governor replaced? A. How's that?

Q. Why was the governor replaced, if you know?

A. The reason the governor was replaced, the old governor was wore out, or the engineers figured it was.

Q. That was the governor that was turned over with the plant? A. Yes.

Q. There was some change in the wiring. Why was that done? A. For matter of safety. [278]

Q. What was the condition of the wiring in the plant at the time it was taken over?

A. It was open wiring.

Q. Open wiring; and the P. P. & L. considered that was dangerous? A. How's that?

Q. And the P. P. & L. considered that was a hazard. A. Yes.

Q. Which required that it be re-wired. You said there was some change made on the 2300 volt feeder. What was the nature of that feeder change?

A. That was the change that was made, the way the original wiring was, it went out through a window, and it was open wiring. Now it is in conduit.

Q. Then there was a chlorinator put in there to chlorinate the drinking water?

A. That's right.

Q. The water used by the operators there?

A. And their families.

(Testimony of Silas E. Yeager.)

Q. What was the reason for that being put in there?

A. Originally the water was taken from the canal and it was pumped to the Milwaukee Railroad water tank, and the houses were tapped off of this main line to the Milwaukee Railroad, and at the time the company took over they tested the water in the canal and it tested polluted, so [279] they put in a chlorinator so that there would be none of that afterwards.

Q. To insure an unpolluted——

A. Domestic water.

Q.——water supply. Was there any change made in the three residences that the operators occupied there, after it was taken over, painting or anything of that sort? A. Well, they were repaired.

Q. Were they repainted? A. Yes.

Q. The cottages there were repaired and repainted and put up in shape? A. That's right.

Q. Now, you mentioned the fact that your records there showed the amount of power used in pumping for the Priest Rapids Irrigation District. Was that shown by anything there at the power plant?

A. No, that was shown by the meter readings at the Coyote Pumping Plant.

Q. And who supplied you with that data?

A. The operator of the pumping plant at Coyote.

Q. So actually your record as to the amount of power that was utilized for the pumping at the Priest Rapids Irrigation District was simply the

(Testimony of Silas E. Yeager.)

information furnished to you by the District man at the pumping plant who was operating the plant there? [280]

A. That's right.

Q. That was not records that were kept or available at the power plant itself?

A. The pumping station at Coyote kept a record of their meters as it was fed in, and at the end of each day, the twenty-four hour meter reading was transmitted to the Priest Rapids operator.

Q. Well, the point I'm making is this; that that was not records which you kept at the pumping plant, but was records which was kept by the Priest Rapids Irrigation District itself, and 'phone up to the plant?

A. No, at the pumping plant, right from the pumping plant——

Q. Yes.

A. ——and it was 'phoned to the operator on shift at the Priest Rapids station, and that was recorded, and then at the end of the twenty-four hours it was transmitted to the dispatcher of power at Pasco each day, and there was a record kept; that is, the total of the twenty-four hours was kept at the Priest Rapids, on these sheets, and there was an hourly record kept at Priest Rapids, or at Coyote, I mean.

Q. And those records were simply added to the records which you kept at the pumping plant as they were 'phone in?

A. We never had anything to do with those records. [281]

(Testimony of Silas E. Yeager.)

Q. They do appear on your records there?

A. They were 'phoned to us.

Q. I say, those records, you did not keep them yourself, they were 'phoned to you?

A. That's right.

Q. And then you simply transcribed them on your records as they were reported to you by 'phone?

A. That's right.

Mr. Ramsey: I think that's all.

Redirect Examination

By Mr. Powell:

Q. Which three residences were there that were occupied by the operators?

A. The three residences or cottages that are now designated as cottage number 1 and number 2 and number 3.

Q. And they are the ones closest to the power plant?

A. That's right.

Q. We saw them yesterday, painted yellow, are they not?

A. Yes.

Q. How are those—how are they equipped? Do they have a telephone system?

A. They have a local telephone that goes to the station, and connected in series with each other.

Q. They're connected by telephone to the station and with each other?

A. Yes, around the same line. [282]

Q. And do they all have electricity?

A. Yes.

(Testimony of Silas E. Yeager.)

Q. Do they all—what about running water?

A. They all have running water.

Q. Inside plumbing?

A. Inside plumbing and sink; practically modern.

Q. Bathroom fixtures? A. Yes.

Q. How large are they?

A. In rooms, or dimensions?

Q. Rooms.

A. Well, the number 1 cottage is four rooms and a bath, that's when the District had it, and then there was a front porch and a back porch, and the number 2 cottage was three bedrooms, a kitchen, and a sitting room, and a bath, and it had a back porch and a front porch, and the number 3 cottage has four rooms and a bath—five rooms and a bath.

Q. How are they heated?

A. The number 1 cottage was—it is wired for electric heat, that is, it has the 220 volt wiring system for electric heat; the rest of them are heated by stove.

Q. During any of the time that you were there, Mr. Yeager, was any of the power used for irrigation at the plant?

A. While I was there, while the District run it, there was a [283] farm, ranch, that they pumped water to, this farm at Priest Rapids.

Q. It pumped water to the farm at Priest Rapids? A. Yes.

(Testimony of Silas E. Yeager.)

Q. Now, where is the pump?

A. It is on the second floor, or lower floor; the transformer floor.

Q. On the transformer floor of the power house?

A. Yes, on the same level as the transformers were.

Q. Now, there is a pipe line that is suspended below the walkway into the plant; is that the pipe line?

A. Yes.

Q. And that was used for irrigation, is that right?

A. Yes.

Q. Where did you get the water?

A. Out of the canal.

Q. Now, in reference to the meters at Coyote——

Mr. Ramsey: Just a moment, Mr. Powell. In regard to the question you've just been asking, do I understand this was land belonging to the District that was irrigated by those facilities?

Mr. Powell: I don't think so; I am not sure.

Mr. Ramsey: Then I object to the entire line of questioning, not having anything to do with the Priest Rapids Irrigation District. [284]

Mr. Powell: I think they owned the pump and motor.

Mr. Ramsey: Well, I would want some evidence of that kind before I would not object.

The Court: I will overrule the objection, and let it stand.

Mr. Ramsey: Exception, please.

(Testimony of Silas E. Yeager.)

Redirect Examination

(Continued)

Q. Mr. Yeager, in reference to the meter reading at the Coyote pumping station, who was the operator of the pumps at Coyote during 1942?

A. Leonard Collins.

Q. C-o-l-l-i-n-s? A. I believe so.

Q. Do you know where he is now?

A. I think he has a place at Selah, or at Zillah.

Q. At Zillah? A. Yes.

Q. And did you ever check the meters at Coyote yourself? A. No.

Q. You never have? A. No.

Q. Have you ever seen the meters there?

A. Yes.

Q. And what records, if you know, were kept at the Coyote Pumping station? [285]

A. Records similar to our daily log sheet, except that it just had the incoming meters, no outgoing meters entered into it.

Q. Just a little louder, please.

A. The meters that metered the incoming power or current.

Q. And all the records that were 'phoned in to you, were they entered in the records that you have identified. A. Yes.

Q. And can you state whether or not they are correctly entered as 'phoned to you?

A. To the operators. At any time that there was an interference on the high line, why, we would have

(Testimony of Silas E. Yeager.)

to pick them up later on, either in person or through 'phone, but they were delivered to the Priest Rapids station and entered, so that they could be made up and turned in to the dispatch office at Pasco.

Q. When you say they were delivered, how were they delivered?

A. Well, the chief operator would go to Coyote and pick them up, that is, get the figures.

Q. Have you ever done that? A. No.

Mr. Powell: That's all.

Mr. Ramsey: That's all.

(Whereupon, there being no further questions, the witness was excused.) [286]

B. SALVINI

a witness called on behalf of the defendant, resumed the stand and testified as follows:

Direct Examination

(Continued)

By Mr. Powell:

Mr. Powell: May I ask, Mr. Reporter, if you can give us the last question and answer?

(Whereupon the reporter read the last previous question and answer of this witness, as follows:

(Testimony of B. Salvini.)

“Question: Does it show the main canal?

Answer: It shows the main canal, the existing canal that there was there in 1943, from Coyote Rapids down to the end of the canal, down below Hanford.”)

Q. Do you know how many miles of canal there was there, Mr. Salvini?

A. Well, I never seen any measure, but we thought all the time it was around fifteen miles.

Q. The main canal?

A. From Coyote Rapids down to the end of the canal.

Q. From Coyote Rapids down to the end of the canal. Now, were there any laterals?

A. Yes, we had several laterals.

Q. Where did they go?

A. Well, we had one serving the White Bluffs area.

Q. One serving where?

A. The White Bluffs area; then there was another one serving [287] another area lying down south of White Bluffs and north of Hanford, between Hanford and White Bluffs; then we still had another pipe line coming out just west of Hanford, that was serving the land situated west and north of the town of Hanford.

Q. How many miles of pipe line did you have?

A. I don't know; I know we had quite a few pipe lines, but I don't know the amount.

Q. You don't know the mileage of it?

A. No.

(Testimony of B. Salvini.)

Q. Was the area that was irrigated all in one solid block? A. No.

Q. How was it located with reference to the main canal?

A. The area that was irrigated was mostly the land that used to be served by the old Hanford Irrigation and Power Company, and most of those lands where they was getting water, because they had the facilities when we took it over from the receiver, and we made not very many big improvement outside of just keeping up those and the repair, so a lot of places there wasn't any facilities to irrigate the land.

Q. In a lot of places there were no facilities?

A. In a lot of places there were no facilities.

Q. From the canal?

A. From the canal. [288]

Q. And where did those farmers get water?

A. Quite a few get water from a well, where they were pumping.

Q. How did they pump?

A. Well, they had a motor and pump.

Q. Electric motor?

A. Electric motor, most cases.

Q. Where did they get the power to do that?

A. Well, they get the power through the Pacific Power and Light Company.

Q. Pacific Power and Light Company, is that correct. A. Yes.

Q. Did the Priest Rapids Irrigation District sell any power at retail; I mean sell any retail power to customers? A. No.

(Testimony of B. Salvini.)

Q. Did you sell power wholesale? A. Yes.

Q. To whom?

A. To the Pacific Power and Light Company.

Q. Now, do you know how many acres of land were being irrigated from the canal in 1943—let's say in 1942?

A. There's around 1200 acres that was irrigated from the canal.

Q. Can you get the exact acreage?

A. Well, probably the secretary I think has got the right acreage. [289]

Q. That is Mr. Reiersen?

A. Mr. Reiersen.

Q. And that will show on what?

A. That will show on what land was irrigated by the canal.

Q. And where will that show, in the assessment rolls?

A. Not the assessment roll, but from the receipts of the water paid during that year of the different land owners.

Q. Referring to Exhibit 1, Mr. Salvini, the map, there appears to be quite an acreage of land under or between the canal and the river. Was all of that land within the irrigation District?

A. You mean from Coyote Rapids down to the end of the canal?

Q. Yes.

A. No, not all of that land was under the Irrigation District. All the land of the District is down

(Testimony of B. Salvini.)

north of the canal, but not all that land is under the Irrigation District; some is excluded.

Q. Mr. LaFramboise, could you put this up somewhere? Do you mean, Mr. Salvini, that all the land that is in the Irrigation District is below the canal, that is, between the canal and the river?

A. Yes.

Q. But not all of the land between the canal and the river is in the Irrigation District? [290]

A. That's right.

Q. I wanted to see if I make myself clear on that, your Honor. Would you come down to the map, Mr. Salvini, please, and point out the location of the various District facilities? First, indicate on the map, if you will, please, where the main canal is located.

A. On the map the main canal starts here, the pumping plant at the Rapids, and this heavy line in here, kind of crooked someplace, that comes down this way and then down here.

Q. And that's the canal you said you understood was fifteen miles long, is that correct?

A. Well, we heard it was that. I never did measure it. We heard it was around fifteen miles.

The Court: I might call counsel's attention to the fact that if the witness does not identify what he's pointing to on Exhibit 1, his testimony will be meaningless to an appellate court. If he says "beginning here" and "going here" they wouldn't know what he's talking about.

(Testimony of B. Salvini.)

Q. Thank you. Indicating the map again, is there a location on the map shown as Coyote Rapids, or Coyote Pumping Station?

A. Right there.

Q. And what is the mark that appears there? Does that indicate Coyote Pumping Station? [291]

A. Yes.

Q. It does; and is that where the heavy line starts, and proceeds to the right and down on the map?

A. That's the one.

Q. And the lower right hand corner is the lowest heavy line, is it not?

A. Down here.

Q. Yes. Now, where were the laterals, just generally?

A. Well, the lateral one is starting right up here.

Q. When you say "up here" you mean—

A. Up this bend up here, of the canal.

Q. That is the point where the canal reached the farthest north?

A. This would be going down south east, so at the point up here where it turns, well, there's a pipe line that goes down in this direction and irrigates the land.

Q. Which direction, Mr. Salvini?

A. Well, it goes down up here into this section.

Q. It is to the right of that point marked by number 21, is it not?

A. Well, I know from here it comes down to this section here.

Q. When you say "from here" the reporter can't get that in the record, Mr. Salvini. Could you identify it otherwise?

(Testimony of B. Salvini.)

A. Well, I think you go north, I mean east, in an easterly [292] direction, and after you cross over about three thousand feet, well, it started using water out of that pipe, then it would be clear down to the river, that whole section, and this one laying east here, then, is a pipe line that goes up north from the other section up here, laying 'way up north, along the river.

Q. And where is the next lateral?

A. The next lateral, it starts just about on this section line somewhere.

Q. That is the section line indicated "SW" or "WB"?

A. SW or WB, yes, and it goes on an eastern direction, easterly direction, until it gets down to section up here, where "WB" is marked on the map.

Q. That's about where the "B" is in "White Bluffs"?

A. Yes, and up there it come out of the ground, and is a dirt ditch just running down kind of a south easterly direction, and it reaches over, reaches down to the Section 15. It feeds practically all of the land that is taking water out of that lateral; then we got another pipe line that I did not mention before, and it started down just before we get to that Diver place, it's about four miles south west of White Bluffs, and that is a canal that goes down and up for about a mile, and then there's a syphon in there about a thousand feet long, going east, and it throws up the water on section, I think it [293]

(Testimony of B. Salvini.)

is called Section 16, and then they go down and irrigate part of Section 15 and 16 that is not irrigated, by the other lateral that comes down the other way; and the last pipe line in this is down about a mile west of Hanford and it's just about a mile long, that one, and it come out and throws out the water just about a mile west of Hanford, and that water will go backwards, go west, kind of northwest, clear over where the other pipe line, this will go and reach the land up there at that time, and that's what most of the irrigated land was, because down below Hanford it was the main canal that was irrigated.

Q. That is, they took water directly from the main canal?

A. They took water from the main canal. There was little flumes and little laterals, but not any syphons.

Q. Now, the squares marked on the map, Exhibit 1, are to indicate what?

A. Those squares?

Q. Yes. A. I suppose it's sections.

Q. Well, you can see the townships and ranges marked down there, can't you? They would be clear down at each square on the map, and indicate a section which would be a mile on the side, is that right?

A. Well, it would be a mile each side. [294]

Q. And when you indicate, Mr. Salvini, that one of the laterals took off from the main canal about four miles south and east of White Bluffs, that point can be indicated by counting the squares on the map, can it not?

(Testimony of B. Salvini.)

A. Just about; it is nearly always four miles because I know it is down below that here.

Q. Now, while you're there at the map, Mr. Salvini, would you indicate where the power plant was located? Does it show on the map?

A. It is right here.

The Court: Is it labeled "power plant" on there?

Mr. Powell: Yes, sir.

The Court: Well, that's sufficient, I'm sure.

Direct Examination

(Continued)

Q. And the words "power house" are printed there, are they not?

A. Yes, the word "power house" is printed right there at that place.

Q. And is there anything to indicate the transmission line there?

A. Yes, this line up here I think indicates the transmission line there?

A. Yes, this line up here I think indicates the transmission line.

Q. And is there anything on the map to indicate?

A. Well, it indicates the 66,000 kilowatt transmission line, down as far as about a mile and a half west of Coyote plant. [295]

Q. That's 66,000 volts, isn't it?

A. Yes, 66,000 volts.

Q. Not 66,000 kilowatts, is it?

A. No, that's volts.

(Testimony of B. Salvini.)

Q. Then what was there at the Coyote Junction?

A. Up here it's a place where our transmission lines hook up with the Pacific Power and Light Company.

Q. Now, you're pointing at the map and saying "here"; you mean that place that is designated Coyote Junction?

A. Well, it's about a mile west, mile and a half, I guess it is, west, and that's the branch line that goes down to Coyote Junction; that transmission line goes down in an easterly direction until it reaches the place where the pumping station is.

Q. Now, was that line in there in 1943?

A. Yes.

Q. Was it being used? A. Yes.

Q. Now what did you do at Coyote Junction? That is, what was the purpose of Coyote Junction?

A. Well, that's the place where the water—I mean the extra power, that we sell, is diverted over to Pacific Power and Light. There's a switch right there.

Q. Was there a connection there with the Pacific Power and Light Company line? [296]

A. Yes.

Q. Were there any transformers there?

A. Well, I don't know just what you mean, but there was all the necessary equipment there that made the change.

Q. And then what power was transmitted over the line from Coyote Junction down to the pumping plant?

(Testimony of B. Salvini.)

A. Well, we just took down what we was using at the pumping plant. The rest was going over the line of the Pacific power.

Q. What other properties did you have at Priest Rapids Power Plant besides the power house and equipment? That is, were there any residences there?

A. Well, we had three residences, and there was all the shore land clear up to the intake, up there, the natural intake that was up about two miles or better up above the power plant, and all the land except that dam site ranch that was up there at Priest Rapids, just west of Priest Rapids, and we had the other land up above it, clear up to the head of the canal, laying down east of the Milwaukee right of way.

Q. The land between the Milwaukee Railroad and the river, or the power canal?

A. Uh huh.

Q. Do you know how many acres of land there were there? A. No. [297]

Q. Had the land ever been developed?

A. Well, there was part of that, that dam ranch, they used to farm it; they used to rent it, probably, oh, around a hundred acres, because it was easy for them to water. It was adjoining the north side of the place. That's all I remember that was farmed.

Q. There was a farm, then, being operated at the power house, near the power house?

A. That's the one.

Q. Was that farm owned by the District?

A. No.

(Testimony of B. Salvini.)

Q. And the District land was farmed by the farmer who had this other farm, is that correct?

A. Yes.

Q. How much land of the District's would you say that he was farming?

A. Well, after the District took it over, I think that they never—they changed owner up there, or operator, and they just quit irrigating, less land and less land, and so I couldn't tell just right how much it was, but there was around a hundred acres up there that was irrigated and farmed by those people.

Q. Around one hundred acres of land owned by the District, is that right? [298]

A. Uh huh.

Mr. Powell: We did not introduce identification 2. May I ask leave to withdraw identification 2, that was a tabulation of water readings, and we'll make another tabulation.

The Court: Yes.

(Whereupon, Defendant's Identification 2 was withdrawn.)

(Whereupon, tabulation of property and water rights was marked Defendant's Exhibit No. 3 for identification.)

Direct Examination

(Continued)

Q. Now, Mr. Salvini, you maintained, the District maintained, did it not, a power canal on its property, from the intake down to the power plant?

A. Say it again, please.

(Testimony of B. Salvini.)

Q. The district had a power plant on its property, did it not, from the intake of the canal down to the power plant? A. Yes.

Q. And that canal right of way was on your property, is that correct? A. Yes.

Q. And what about the transmission line, whose property was that on? [299]

A. Transmission line to come down to Coyote?

Q. Yes.

A. Well, that, we had an easement.

Q. And from there to the pumping plant?

A. Yes, down to the pumping plant.

Q. And what about your main and lateral canals?

A. Well, I suppose we had a right of way.

Q. They had been in there for how long?

A. I was told they been in there since 1908.

Q. You know they have been in there since 1917?

A. 1917 I know they was there.

(Whereupon, permit by War Department to Hanford Irrigation and Power Company was marked Defendant's Exhibit No. 4 for identification.)

Mr. Powell: We offer, if your Honor please, defendant's identification 3 in evidence, which is a tabulation on page 2 and 3 of parts B and C of the property described in the Declaration of Taking, and in part A, water rights as shown by exhibit for identification 4, and four other certified copies of appropriations that we have.

(Testimony of B. Salvini.)

Mr. Ramsey: Objected to, if the Court please, as to Exhibit 3 on the ground and for the reason that the so-called exhibit is nothing more than the defendant's own tabulation of what it alleges [300] to be certain rights, together with a portion of what purports to be a description of real property and rights of way under the Declaration of Taking. I wouldn't so strenuously object to the excerpts from the Declaration of Taking, as a separate exhibit, although I think that is objectionable, since the interest taken in toto under the Declaration of Taking should certainly be set out together with the description of the land; but the so-called water rights here are matters for proof, purely, and this constitutes a statement of what counsel contends to be his water rights.

The Court: May I see it? This objection will have to be sustained, as to not being evidence of the rights of way of the District. If proof is made that the defendant has these water rights and rights of way, then this tabulation would be proper, I think, for the convenience of the jury in listing those in a convenient form of reference.

Mr. Powell: I think your Honor is correct, and for that reason I am offering identification 4, a certified copy of the original War Department permit, the first item mentioned in the exhibit for identification 3, and the four certified copies of the four filings as they appear in items 2 to 5 inclusive on page 1.

(Testimony of B. Salvini.)

(Whereupon, Assignment of Water Appropriation by Burch was marked Defendant's Exhibit No. 5 for identification.) [301]

(Whereupon, Assignment of Water Appropriation by Haynes was marked Defendant's Exhibit No. 6 for identification.)

(Whereupon, Notice of appropriation of water by Hanford Irrigation and Power Company, November 13, 1908, was marked Defendant's Exhibit No. 7 for identification.)

(Whereupon, Notice of appropriation of water by Hanford Irrigation and Power Company, November 20, 1909, was marked Defendant's Exhibit No. 8 for identification.)

Mr. Powell: I have merely taken the information from those to put into this list, if your Honor please, and it is not my intention by the use of the words "water rights" to establish any right in connection with the identification. I did it purely for convenience, because there they're all together, and here they're in separate sheets.

The Court: Oh, I see. Is there any objection to these?

Mr. Ramsey: Your Honor, I would ask that the motion for admission of those exhibits be held in abeyance until recess time, until I have an opportunity to look at the documents. I have not yet seen the documents and I don't know whether there is objection or not.

(Testimony of B. Salvini.)

The Court: Well, shall we defer them until after the recess, and perhaps Mr. Ramsey can look those over. [302]

Mr. Powell: I might ask if there is any objection on counsel's part to the introduction of parts B and C, which is information taken from the Declaration of Taking?

Mr. Ramsey: Yes, your Honor, at this time there is. I might not want to insist on that objection later, but I do object to it at this time upon the ground that it is totally improper to set out as a separate exhibit a description of land without setting out therein as taken from the Declaration of Taking the interest acquired by the government under its Declaration of Taking in the lands. As it stands it simply stands as a description of land without any description of the interest acquired.

The Court: Well, I think we had better put this aside for the present and go back on those identifications.

Direct Examination

(Continued)

By Mr. Powell:

Q. When did you first see the power canal, Mr. Salvini?

A. Oh, it's around 1920, I think.

Q. 1920; and was the power canal being used then, the power plant being operated?

A. Yes.

(Testimony of B. Salvini.)

Q. How often did you see it from the time you became a director in '32 until you left the project in May of '43?

A. Oh, then, since 1932 well we went up there quite often, sometime we went up every month, every two months, sometimes every week, just depends what things arise. [303]

Q. And were there any changes made on the power canal in recent years?

A. Oh, there was quite a few changes.

Q. What was the nature of them?

A. Well, right after the District took it over, well, we had quite a work done to level it up, to level up the bottom of the canal; in some places there was some humps.

Q. There were some humps in the bottom of the canal?

A. Bottom of the canal, and that was around at the time that we put in that new wheel at the power house; then we worked from 1939, I think it was '39 and '40, and it is still—'41, we cut another entrance to the river.

Q. You cut another entrance to the river, is that right?

A. Yes.

Q. What was the purpose of that?

A. Well, the other one that is up along the shore, that middle channel, it is a little higher than the bottom of the canal down below, and naturally when the water was down low it wouldn't come in at all, so before we cut that channel, why, they wouldn't be able to generate juice all the year

(Testimony of B. Salvini.)

around, but after we did that, it was supposed to generate power all the year around.

Q. Was there a time when you couldn't generate power at all?

A. Well, I think there was some winters that probably we closed down a month or so for repairs, or maybe just because the water was being down too low, or some needed repairs. [304]

Q. After you cut this new channel to the river was it necessary to close down?

A. No, we never did close down for lack of water since we started to use that channel.

Q. How long has it been since you've been over there?

A. Oh, I didn't was over there since spring of 1943.

Q. And have you been there at any time so that you could walk out on to the edge of the present power canal, at the intake?

A. I never was at the intake any more.

Q. Well, were you there in '43?

A. Well, we was there in '43, in the spring of '43, I think around February, the month of February.

Q. Is it possible to see and identify the intake of the power canal, Mr. Salvini?

A. If you are in the right place on the opposite shore, why, you could see it, all right.

Q. I mean the first original intake.

A. Oh——

Q. Can you walk right out to it?

A. Yes.

(Testimony of B. Salvini.)

Q. And there is some sort of a roadway built up there, is there? [305]

A. Oh, there used to be.

Q. What is that for? A. That road?

Q. Yes.

A. Well, that road, must have used it from the District when we were working up there, and then when there's no water in the center well somebody could have travelled up, some Indians, that's why that road in there.

Q. No, I'm referring to the roadway from the bank of the roadway out to the entrance of the canal.

A. No, that was just used by the District.

Q. Then where is this new channel that was cut through, from the intake of the canal, the old canal?

A. Well, you come down about 2500 or 3000 feet and there it's cut through that ridge that lays between that natural channel that's up there along the river, that you could see up at the head of the canal, but you won't see that cut unless you are down right facing this one, because the land up there is some brushes were there, used to be; you got to walk down up there so you could see the channel across.

Q. That's about a half a mile, then, below the intake of the canal?

A. Not quite half a mile, I don't think.

Q. By the way, is there a dam up there? [306]

A. Well, there's a dam right there, the dam is where this cut-off is made.

(Testimony of B. Salvini.)

Q. And how far below the old intake is the dam located?

A. Well, it's right there at this cut we made. This cut is just inside the dam.

Q. And how did the District do this work, this improvement?

A. Well, we give out the contract for this work. The District didn't do the work, that was done by contract.

Q. Do you know whether or not, Mr. Salvini, after you did this work you got better or less power production?

A. Oh, we got better power production. It was shown by the book up there at the plant, registering up there.

Q. Did you do all the work at that time that was planned?

A. No, we had some more, couple of places yet on the canal to dig out.

Mr. Ramsey: Just a minute. If the Court please, I object to testimony as to plans that were never acted upon.

The Court: I'll sustain the objection.

Direct Examination

(Continued)

Q. Was any work done at that time on the dam?

A. On the dam behind that cut?

Q. Yes. A. No.

Q. Was any work done on the bottom of the canal? A. Yes. [307]

(Testimony of B. Salvini.)

Q. Is there a spillway in the canal, part way down? A. Yes.

Q. What is the purpose of that spillway?

A. Well, whatever, at the high water, when there was too much water to come down at the plant, they won't be ready to take it, why, if we didn't have that spillway, we would be flooded out, so the purpose of that cut-off is to get rid of the extra water that we don't need down there.

Q. During extreme high water, is that right?

A. Yes.

Q. How did it work? A. Worked good.

Q. Well, that is, did the water back up from the power house? A. Oh, yes.

Q. Where did the spillway lead to?

A. Well, it leads back in the river; the gates are closed down there, they're just taking the water that the wheel needs, and the balance of the water just finds that spillway up there and goes out in the river.

Q. Do you know how much water is carried in the canal?

A. No; I heard about it, but I don't know.

Q. Have you examined the three residences that you referred to as being District property?

A. Yes. [308]

Q. Have you been in all three of them?

A. Yes.

Q. You weren't here in court to hear Mr. Yeager's description of them, were you?

A. No.

(Testimony of B. Salvini.)

Q. What kind of residences are they?

A. Well, the two first residences laying just east of the canal, those were first class shape, put up a new roof on the second one just the year, the spring, that we left over there. The third one laying out west about five or six hundred feet from the power canal, well, that one needs some repairs that spring, but we had a workman up there that was working at the time, but we had to quit, but all three were occupied just the same. I think Mr. Yeager was living in this third one that I spoke about at the time, in 1943.

Q. Were they equipped with electricity and running water?

A. Yes.

Q. Was there a telephone system there?

A. Yes, we had a telephone system, and it was—forget just what kind of a connection we had with the railroad, too.

Q. You had a telephone connection also with the railroad?

A. Yes.

Q. Now, Mr. Salvini, have you qualified at any time as an expert witness on real estate values in this case, in this court? [309]

A. Not in this case, no.

Q. I don't mean in this particular case, Mr. Salvini, that is, the one we're trying today; in some of the land cases from Hanford?

A. Yes.

Q. And as part of your duties as a director of the Priest Rapids Irrigation District do you have to value real property?

A. No, we didn't.

(Testimony of B. Salvini.)

Q. Well, how do you fix the fair market value of farm lands, yourself?

A. Well, we just knew what it was, but really we didn't try to appraise that land up there at Priest Rapids.

Q. Oh, you did not appraise the houses at Priest Rapids? A. No.

Q. Those have never been appraised by you?

A. No.

Q. But what I was asking, Mr. Salvini, if you do know the values of real properties generally in the Hanford area. A. Yes.

Q. And what is the closest settlement to the Priest Rapids settlement that might have residences for sale. A. It would be down at Midway.

Q. Well, Midway is owned by the Bonneville Administration, isn't it? A. Yes. [310]

Q. I don't think they would have anything for sale but power, Mr. Salvini. Wouldn't White Bluffs and Hanford be the closest communities?

A. Yes, the next would be White Bluffs and Hanford.

Q. And would you be familiar with the values of real property at White Bluffs and Hanford?

A. Yes.

Mr. Ramsey: Objected to for the reason that the value of property in towns is in no wise comparable with the value of residences where there are three residences, separated from any settlement by, I don't know, twelve or fifteen miles, I suppose, and

(Testimony of B. Salvini.)

where they have no use whatever except as residences for the operators of the power plant itself.

The Court: Well, somebody has to value them. You have to get the closest to it you can, it seems to me.

Mr. Ramsey: Well, the point I am trying to make, if the Court please, is this: I can't conceive how we can fix the values of these particular houses, which were built here for one purpose and had only one purpose for which they could be used, on the basis of fair market value of properties down in the town. I think we're going to have to use another approach. No man would buy one of those [311] houses, because it would be on Priest Rapids Irrigation District lands. He couldn't buy the land that went with it. It was in an isolated district where he would have no purpose at all in being unless he was working for the Priest Rapids Irrigation District.

The Court: Yes, I get your point. I think we'll recess now for ten minutes.

(Short Recess)

(All parties present as before, and the trial was resumed.)

(Whereupon the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: I might say, before we call in the jury, I wondered if there is any real question or contest about the District owning the land that is

set out, the property that is set out and described in the Declaration of Taking?

Mr. Ramsey: Oh, no, your Honor, there is no contest on that point.

The Court: Is there any objection to these exhibits? I presume—I haven't looked over them in detail, they're offered as evidence of the acquisition of water rights by the District?

Mr. Powell: Yes, your Honor. [312]

Mr. Ramsey: Yes, your Honor, there is certainly a number of objections to that, and I would like to be heard on them, and I presume should be heard in the absence of the jury.

The Court: Well, that's what I thought. That's the reason I mentioned it before they came back in here. Before we go to that, on this matter of the houses down there, what you proposed to do, I presume, Mr. Powell, was to value them separately, or have this witness testify as to their value separate and apart from the rest of the power plant property there?

Mr. Powell: The main reason of having the witness testify to the value of the houses was that I felt that the witnesses we had to value the other properties would be including in their over-all figure some figure for the residences, and there should be some basis for that figure; not to have a separate value for the buildings, but somebody who is familiar with them, to give the value of these buildings as part of the power property.

Mr. Ramsey: My theory is that that is the only manner in which they can be valued, as to their

use value or increment value with the other properties of the District. There could be no demand or value separate and apart from that, except salvage value of the lumber, or something of that sort. [313]

The Court: But it is necessary to place some value on this property as a whole, the power plant properties there, and I see no reason why that has to be done by each witness as a whole. For instance, this witness may know about values of dwelling houses; he knows nothing about values of generators or dynamos; some other witness knows about generators and dynamos and doesn't know about the houses, and it is the practice, I am sure, in these cases involving whole utility systems, where a Public Utility District condemns, one witness may come in and testify as to his opinion as to the value of the meters, another as to the value of the generators, and the over-all witness can adopt the other witnesses' values on a part to apply it to the whole. I would think that could be done here.

Mr. Ramsey: I am submitting that you're asking the jury to place a double value on the value of those buildings. Your power witnesses place the over-all value; you have a separate witness testifying as to the value of the buildings, which are a part of the property, and inevitably that jury is going to add to the value of the property the value of those buildings. I submit again that we can't possibly submit a value on those buildings there on the property, built for only one purpose, to house workers. Certainly no man would want

to buy [314] that and isolate himself in that canyon fifteen or twenty miles——

The Court: I understand that they have no separate cash market value.

Mr. Ramsey: Even on the valuation of a farm you don't value the buildings separate and apart. You value the entire unit, with the buildings on there. Take the buildings off and you would arrive at a different value. Certainly you don't value the house and the barn separately and then add up your totals. That's been held by every court.

The Court: I know that's true of ordinary farm property and residence property, but you're dealing with something different when you're dealing with an electric distribution system or a power plant and distribution facilities like this. With your farm, if you had a new type silo, the owner certainly shouldn't be deprived of the value simply because nobody knows it along with the rest of the farm.

Mr. Ramsey: Can we assume that these witnesses who testify on the value of power property are not qualified to state what the additional value to that property is by reason of having there three residences for the use and benefit of the operators of the property?

The Court: Well, I don't know; I haven't seen the [315] witnesses yet, or heard them qualified, but counsel seemed to indicate that what he wanted to do is to have a separate appraisal, and have his power expert adopt that and say "This property, including the houses, is worth so much"; "What

do you know about it?"; "Well, I'm taking the value that Mr. Salvini put on it".

Mr. Ramsey: Well, if the witness will do that I will certainly move to strike all the testimony of the over-all witness on the ground it isn't his appraisal and therefore should not be received at all, if he's adopted another man's evaluation that isn't his own.

The Court: Your point is that every witness must testify to the value of all of this property; you do segregate, however, you have no objection to segregating the irrigation part of the property from the power plant part?

Mr. Ramsey: No, your Honor, not at all, but we've got a peculiar situation here. Those houses, I can't see what possible approach other than including them in the total value of the property can be used. Certainly to testify that he knows the value of residences of this character in White Bluffs was five thousand dollars is no basis for placing five thousand dollars on a house built up there by the company for the use of their employee only, which would have no sale value whatever standing by [316] itself. It has a use value, built there because of the demand of the power plant. If the power plant was shut down, the value of the property immediately would be totally extinguished.

The Court: I think that this witness, as I understand it, has qualified, at least in other phases of this general litigation, as an expert on the cash market value of residence property at Hanford

and White Bluffs. Now, it seems to me, Mr. Ramsey's point is well taken that even as a part of this general power plant here that it would not be helpful or proper to show what the cash market value of these houses are, or rather would be, if they were out someplace where they would be available for use as residences for general residence purposes. I think it would be proper for you, however, since they are different in character from the rest of the power plant property there, to produce a witness, if you could, a house builder or contractor, who knows what those houses would cost, and he can put an estimate on replacement value new less depreciation, or tell what they would cost and place a value on them that way, but it doesn't seem to me you should say "If these houses were at White Bluffs they would be worth so much, and therefore on that basis we'll value them here on that basis". The objection will be sustained. I think, however, the ruling should [317] be after the jury comes in. I am just indicating what the ruling will be.

Mr. Powell: May I ask if there is any question in answer to the court's question of Mr. Ramsey about the ownership of the property by the District, this identification 3, I believe it is, we asked leave to introduce, contains a description of the property. Without that description of this real property the jury may not have any idea about what kind of property they're trying to appraise here, what land beside the power plant, pumping plant, transmission line and the canal.

Mr. Ramsey: Well, I am unable to know what value this could be to a jury in determining the value of the land. Furthermore, I assume the jury will take with them a copy of the Declaration of Taking in the case.

Mr. Powell: Never have.

The Court: The jury will take with them to the jury room the pleadings in the case, that is, the pertinent pleadings in the case, and the exhibits. It is a little awkward sending pleadings to the jury in a case of this kind, because we don't want to send them a file six inches thick, but I think certainly they should have the Declaration of Taking and the Petition and Answers, perhaps, here. Whatever pleadings counsel agree upon or the Court selects here should go with them to the jury room. [318]

Mr. Powell: That is agreeable. I didn't know that the Declaration would go in. That would show the deposit, and I didn't know that the Court would let the jury know what that was.

Mr. Ramsey: Well, I don't think the deposit bears the slightest relationship to the value, or the declaration of taking so states that isn't the basis on which the deposit is made.

Mr. Cheadle: The amended petition I think will show the description of the property, as does the declaration of taking.

The Court: I hadn't thought about the declaration containing a statement as to the estimated value of the property, the amount deposited. I think the amended petition should be best to sub-

mit to them. That could be submitted and show the descriptions, certainly. Now, coming to these offers here covering the water rights, do you have objection to that, Mr. Ramsey?

Mr. Ramsey: There is no objection to Exhibit number—well, it is a permit issued by the War Department—yes, exhibit number 4, which is a War Department permit to the Hanford Irrigation and Power Company to construct the power dam. As to all of the other exhibits the government does object. The other exhibits purport to be and I assume are, I have no reason for assuming otherwise, [319] photostatic copies of certain instruments referred to as assignments of water appropriation, one by G. A. Burch to the Hanford Irrigation and Power Company, being exhibit number 5 for identification——

The Court: Those are certified copies of the documents, aren't they, certified photostatic copies?

Mr. Ramsey: They appear to be just photostatic copies—yes, I believe they are certified to by the County Auditor of Yakima County. The objection is not interposed on that ground, however, your Honor. Exhibit number 6, being entitled "Assignment of Water Appropriation, W. B. Haynes to the Hanford Irrigation and Power Company"; Exhibit number 8, being entitled "Notice of Water Appropriation, Hanford Irrigation and Power Company to the public"——

The Court: What was that last one?

Mr. Ramsey: "Notice of Water Appropriation, Hanford Irrigation and Power Company to the

Public''; Exhibit number 7, being a notice of appropriation of water, Hanford Irrigation and Power Company to the public. Now, taking exhibit number 6, this is an assignment from W. B. Haynes to Hanford Irrigation and Power Company.

(Whereupon, Mr. Ramsey read defendant's exhibits for identification 5, 6 and 9 to the Court.)

Mr. Ramsey: I don't know whether counsel and the [320] Priest Rapids Irrigation District plans on selling the Columbia River back to the United States or not. Apparently that is their purpose. I don't know whether there is any water left in the stream that isn't being claimed by the Priest Rapids Irrigation District at this time. If so, the normal flow of the stream is greater than I thought it was.

(Whereupon, Mr. Ramsey read defendant's exhibit for identification number 8 to the Court.)

Mr. Ramsey: Now, we have a total of fifty—sixty one thousand second feet of water claimed, I assume, by the Priest Rapids Irrigation District. I want to first call the Court's attention to the fact that the Columbia River is a navigable stream, and as such navigable stream it is not controlled by the States bordering thereon. I don't know what the laws of the State of Washington may have been back in 1905, 1906 and 1909, when these so-called filings were made, but whatever it may have been, it could not have operated to have vested in

any person a water right in the Columbia River, which is a navigable stream without any question, and completely under the control of the government of the United States.

Now, all, apparently, that was done was that these men went out and posted a note on a rock or post along the river, claiming therein, some forty years ago, sixty [321] one thousand cubic feet per second of the flow of the river. If that is sufficient to vest a water right, then I don't know why this country isn't filled with millionaires who had the bright idea of filing on the full flow of those streams, and then telling the world "this is my water. You will pay me for it". The only interest in this whole set-up that takes a minute's notice of this Court or anyone else as a basis for claiming a water right or an interest in water is the permit from the War Department to erect a power dam on the Columbia River.

The Court: That's number 4, isn't it?

Mr. Ramsey: Yes, and the only right in the nature of water right that the Priest Rapids Irrigation District has or can have under this group of documents is a prescriptive right gained by it through the diversion and utilization for forty years past of water for power at the Priest Rapids Irrigation District plant, and the water actually pumped from the river and applied to the land. There is no permit from the Federal Government to the Priest Rapids, the Hanford, the Black Rock Irrigation and Power, or any of the predecessors in interest of the Priest Rapids, granting them

any rights in the waters of the Columbia River. There isn't any Federal law that will permit a man to post a notice on the banks of one of the navigable streams of the United States, claiming a part or [322] all of that stream as his private, personal property.

The Court: I will hear from Mr. Cheadle on this.

Mr. Cheadle: May I reply, your Honor, for the defendants? First, I wish to read just one brief excerpt from the amended petition and declaration of taking. This is what the United States is taking in this action, 128-99: "All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation". That, your Honor, we submit, by any construction of clear English, covers any appropriation that may have been made, any appropriation that may have been owned by reason of assignment. Now, that is the only description of the property, but it is obviously all-inclusive of whatever water rights they may have had. I think a very brief response is all that is needed to the suggestion that Priest Rapids could not have any right to the water because it is a navigable stream. Counsel's statement is utterly irrelevant. That is a military establishment at Hanford. It is not an improvement of a navigable stream. If counsel were speaking of McNarey Dam, or Grand Coulee Dam, his point might have some bearing, but it has absolutely none here, and I add also that the Fed-

eral law is quite the contrary now, but it was changed in 1944. Not even in the improvement of navigation since 1944 will the [323] United States take water from irrigation uses, either past or prospective, but in any event it is entirely irrelevant to this case, for the United States is here acting in the exercise of its military powers, has taken these properties for military purposes, and there are cases in the books which if necessary we can brief, supporting that position. I think on water rights, your Honor, of course these are past appropriations, made before the water code of this State was established in 1917, and this is the manner in which appropriations were made. Priest Rapids does not contend it has a water right for the summation of these filings that were made, but we do respectfully submit that as assignees, whatever rights are represented by these instruments, those are the water rights of Priest Rapids, and I submit that when the United States is taking everything in the way of water rights, that Priest Rapids has, either by its own appropriation or by ownership, it is entirely in order to submit in evidence whatever papers there are that show what Priest Rapids may own by assignment.

The Court: It seems to me the government should be compelled to pay only for the water rights that were owned by the District at the time of the taking here, and the objection will be sustained to all except identification 4; exception allowed to the defendants, of course. I [324] think perhaps these offers should be repeated when the

jury comes in. The objection will be sustained to defendant's identification 3, too. As I understand it, the purpose of that will be served anyway by letting the jury take the amended petition to the jury room with them.

Mr. Powell: May I ask if your Honor felt that we had not shown that the Irrigation District owned by assignment these four appropriations referred to as identifications 5 to 8? They were all by subsequent assignment assigned to the Priest Rapids Irrigation District. I think we are in a position to show that.

The Court: I don't believe I get your point.

Mr. Powell: Your Honor stated, I believe, in ruling, that the government should only pay for such water rights or appropriations as were actually owned by the Priest Rapids Irrigation District at the time of taking. Now, if, in addition to the rights by virtue of the War Department order, they had succeeded to the rights of the Hanford Irrigation and Power Company by these four appropriations, if there were any rights it seems to me we should be entitled to what benefits there may be by reason of admitting them in evidence. If counsel comes in with a shot-gun allegation and says "We're taking all your appropriations" and then don't show what they are, it seems to me we are deprived of showing what he's taking. [325]

The Court: Well, he is taking the water rights that you have there, and as I understand it, there is no contention that you do not have a right, at least by prescription, to the water you use to run

your power plant and you will be entitled to compensation on that basis, whatever the evidence may show the value to be. It doesn't seem to me you should be permitted to show by these documents offered that you own practically all the water in the Columbia River, and are entitled to compensation for it. I think you're entitled to compensation for only what you have actually used down there. It seems to me it would be very misleading to the jury, asking them to place values on a tremendously greater amount of water than you've ever used in your operations.

Mr. Powell: Then do I understand from the Court's ruling that we would be prohibited from making any showing that we could utilize more water in the future than we have in the past? It is my understanding that the permit allows us to divert water for power purposes, or the predecessor of the Priest Rapids Irrigation District, which, being a non-consumptive use, I assume would permit us to utilize more if it were all returned to the stream.

The Court: Well, I think you would be permitted to show the value of your properties down there as they were operated at the time of the taking, or as they may [326] have been operated within the reasonably foreseeable future after the taking, not speculative, as to what might have been done ten or twenty years from 1943, but within a reasonable time after that.

Mr. Cheadle: Just for purposes of clarification, if I may inquire, am I correct or incorrect in under-

standing that the effect of the objection made and the Court's ruling is that the Priest Rapids District has only water rights by prescription?

The Court: No, I didn't say that. I said I understood there was no question about your having a prescriptive right to what has been used there. I may be mistaken about that.

Mr. Cheadle: The government contends we can only have a prescriptive right to the Columbia River water?

Mr. Ramsey: So far as your documentary evidence is concerned, certainly if you've got any water rights at all they are prescriptive, and purely prescriptive, because you have no grant of a water right from the government.

Mr. Cheadle: From which government? From the government of the United States? Do you take the position that the United States Government grants water rights?

Mr. Ramsey: You have no grant from Washington, and I certainly say you have no water right to the Columbia River. [327]

Mr. Cheadle: The Columbia River has never been adjudicated, neither has the Yakima, and as a matter of fact, the Yakima River water rights, based on documents just like those, that was the only way water rights were established. To be sure, the Yakima was 'way over-appropriated in the early days, but you can go throughout the State of Washington in what perhaps would be non-navigable streams, even in the Appalachian case, I think water appropriation makes no difference

whether it is navigable or non-navigable. I submit the United States government is not in the business and there is no law that provides for the United States government granting water rights in the Columbia or anywhere else. All that is in this exhibit that has been admitted is permission from the Secretary of War before an obstruction may be built into a navigable stream, and that is all that provides, and that is a regulation by Congress of navigable waters with regard to the placing of obstructions therein, that is all it has to do with it.

Mr. Ramsey: May I inquire if you propose to adjudicate the Columbia River in accordance with the laws of the State of Washington?

Mr. Cheadle: No.

The Court: Is it your contention that you have a water right to all of the water mentioned in these notices? [328]

Mr. Cheadle: No, your Honor.

The Court: How much, then, do you have? How much do you claim under those notices?

Mr. Cheadle: I think there must be claimed the amount which has been used in the past, plus, as your Honor has stated, for purposes of this condemnation action, I would not presume to go into the question of what Priest Rapids might have planned had it gone on operating, but for purposes of this condemnation action I think it should be conceded by the government that they have a water right to the water used in the past, and I think these filings furnish adequate basis

for assuming they have water right for such addition amount they might have used in the near foreseeable future.

Mr. Ramsey: I don't know whether these filings affect their right one way or the other.

The Court: I think that these documents probably should go in for a limited purpose. I had in mind Mr. Ramsey's point here that the defendants should not be permitted to claim compensation for all of the water mentioned in these notices or documents, but even as the basis of prescriptive right I think by showing the origin of it and the claim of title on which it would be based that they would be admissible, perhaps, and they will be admitted for the limited purpose of showing the basis of [329] the water right, which the Court is of the view should be limited to the water actually used or what could have been used in the reasonably foreseeable future, and the effect and scope of them can be limited by instruction to the jury, and the government will have an exception.

Mr. Ramsey: May the government have an exception to the admission of each and all and every one of these exhibits, and may the government further except upon the grounds and for the reason that this court, nor no court, can submit these exhibits to the jury and expect the jury not to **draw the conclusion** from those exhibits, regardless of any instruction the court may give, that the Priest Rapids does not have an unlimited water right which would permit future development to any degree and any extent for power purposes.

The Court: Are we ready to call in the jury?

Mr. Powell: Just one more thing, if your Honor please. On this Exhibit 4 there is a photostatic copy that appears in the county records, and the reproduction of it is so faint and so small that it can't be seen. We have an original blue print which is large, and also have a larger photostatic copy of the same thing. I wonder if as part of the same exhibit we might introduce the big blue print, or the large photostat?

Mr. Ramsey: What does the blue print represent? [330]

Mr. Powell: Just a proposed wing dam, and the blue print was attached to the original permit.

Mr. Ramsey: Objected to for the further reason that the blue print represents nothing more than a proposed development back in 1906.

Mr. Powell: That's part of the exhibit that the Court has admitted in evidence, Mr. Ramsey.

Mr. Ramsey: This goes beyond the realm of mere speculation. Here we have had an intervening 41 or 42 years since that was filed, and now it is offered to the jury for some purpose, I don't know what.

Mr. Powell: Well, we've got it in evidence now. They can't read it because it is so small.

Mr. Ramsey: And now counsel wants to make it plain so they can read it.

Mr. Powell: Well, that's too bad.

The Court: It will be admitted in connection with the identification admitted before.

Mr. Ramsey: Exception, please.

The Court: Exception allowed.

(Whereupon, map of proposed improvement was marked Defendant's Exhibit No. 4-A for identification.)

The Court: Call in the jury.

(Whereupon, the following proceedings were had within the presence [331] of the jury and one alternate juror.)

The Court: I think you had better let the record show, since the jury has just come in, that objection was sustained to defendant's identification 3, and that defendant's identifications 4, 5, 6, 7 and 8 are admitted, and 4-A, to which the government excepts and exception is allowed in each instance, for the reasons stated in the absence of the jury.

(Whereupon, Defendant's Exhibit No. 4 for identification was admitted in evidence.)

(Whereupon, Defendant's Exhibit No. 4-A for identification was admitted in evidence.)

(Whereupon, Defendant's Exhibit No. 5 for identification was admitted in evidence.)

(Whereupon, Defendant's Exhibit No. 6 for identification was admitted in evidence.)

(Whereupon, Defendant's Exhibit No. 7 for identification was admitted in evidence.)

(Whereupon, Defendant's Exhibit No. 8 for identification was admitted in evidence.)

The Court: You may proceed, then.

B. SALVINI

Direct Examination

(Continued)

By Mr. Powell:

Q. Would you give us the last question?

(Whereupon, the reporter read the last previous question [332] as follows: "Question: And would you be familiar with the values of real property at White Bluffs and Hanford?")

Mr. Powell: I think, if your Honor please, that was in reference to the question as to the value of the houses.

The Court: Yes.

Mr. Powell: We now offer evidence of the fair market value of the residences at Priest Rapids.

The Court: By this witness?

Mr. Powell: By this witness.

Mr. Ramsey: Objected to, if the Court please, for the reason that no foundation has been laid for permitting the particular witness to testify as to the fair market value of this or any other house, and objected to for the further reason that the fair market value of privately owned property in communities fifteen or twenty miles distant would be no index whatever to the value of three cottages located some fifteen miles up the canyon in an isolated spot, and built primarily and solely for the use of the employees of the Priest Rapids Irrigation District in the operation of the power plant, and upon District lands.

The Court: Objection sustained [333]

No. 11704

United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation,

Appellee.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

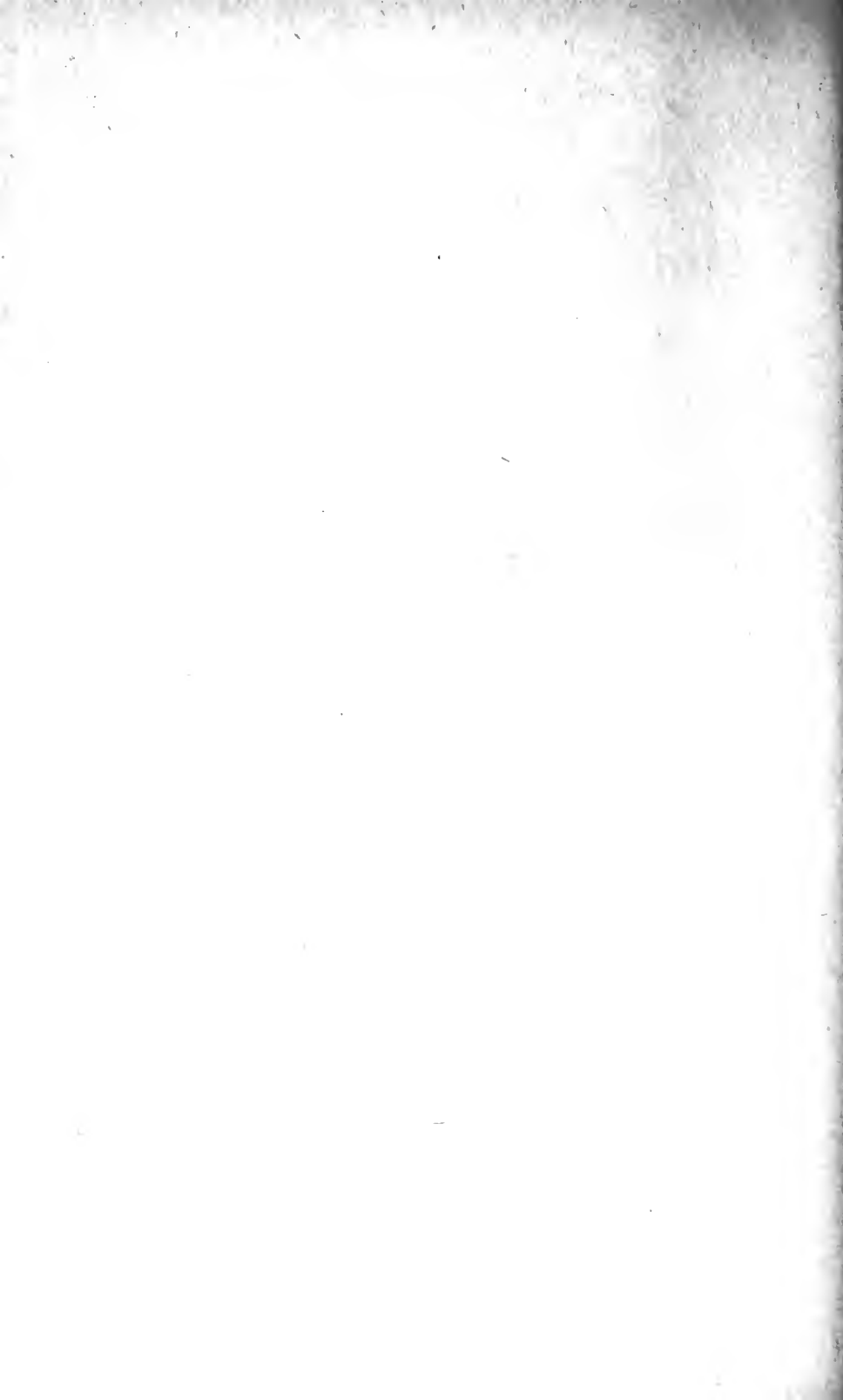
Appellee.

Transcript of Record
IN THREE VOLUMES
VOLUME II
Pages 385 to 780

Upon Appeal from the District Court of the United States
for the Eastern District of Washington
Southern Division

FILED

JAN 28 1948



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Appellant,

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PRIEST RAPIDS IRRIGATION DISTRICT,
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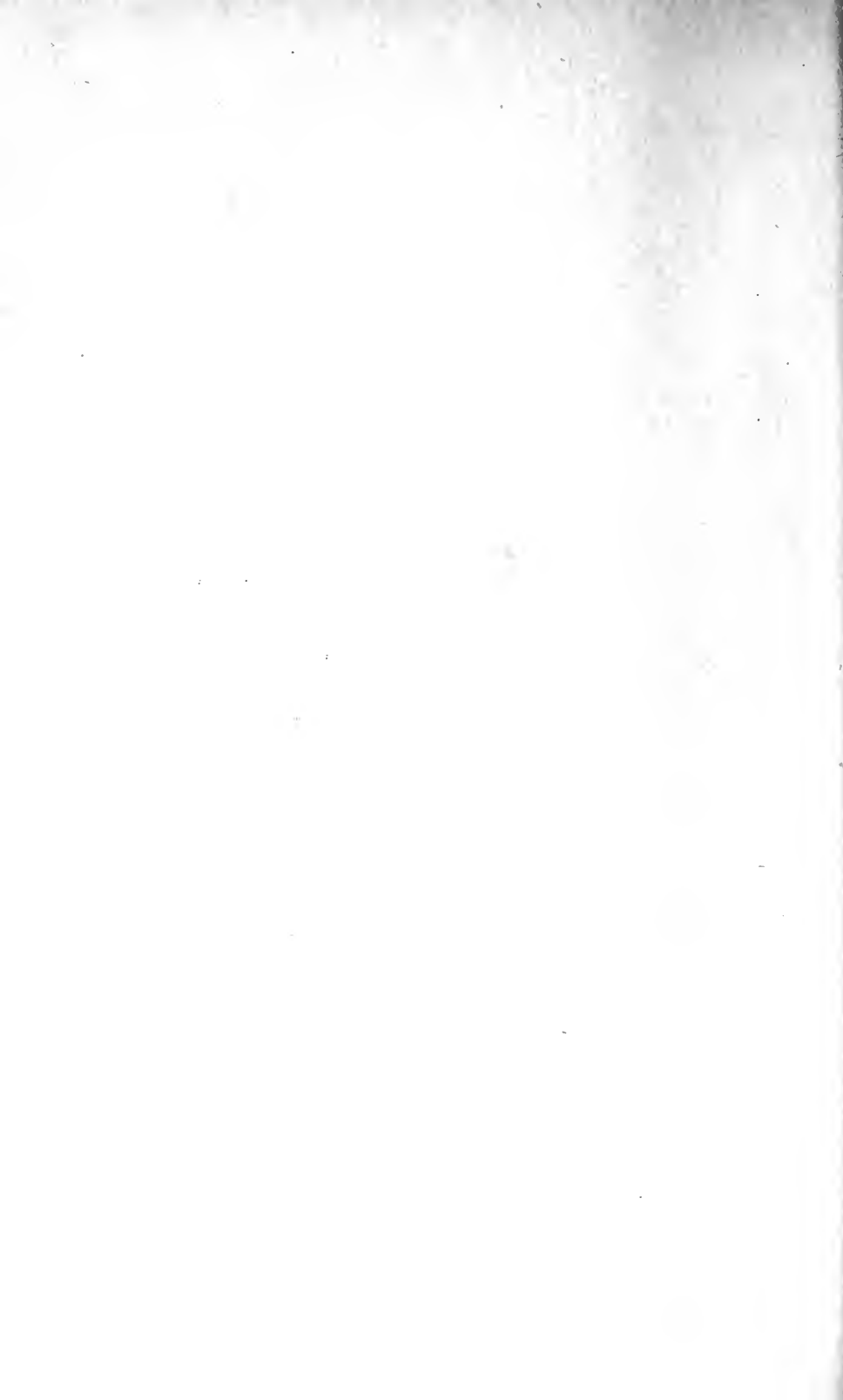
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Upon Appeal from the District Court of the United States
for the Eastern District of Washington
Southern Division



(Testimony of B. Salvini.)

Direct Examination

(Continued)

Q. Mr. Salvini, does the land between the power plant and the head of the canal have any value beside value for right of way purposes? That is, the property owned by the District?

A. It would be a little that could be farmed, outside of the right of way of the canal.

Q. A little that could be farmed? About how much?

A. Oh, just probably might be around eighty acres, more or less.

Q. And do you know what type of soil it is?

A. Yes.

Q. State what kind it is.

A. It is good sandy loam, a good deep soil.

Q. Has any of it been farmed or levelled?

A. Well, there was a part of that that was farmed once.

Q. About how much of it?

A. I think it was around fifty acres or better.

Mr. Ramsey: I didn't get the answer.

A. Around fifty acres.

Q. How could it be irrigated?

A. Well, this land here, it could be irrigated from the same ditch that irrigates the other ranch up there at Priest Rapids, the same canal that serves this ranch could serve the Irrigation District land over north of that ranch, by just add the canal, extending over to the west side of the

land and irrigating east, down toward the river.

Q. And how was that land irrigated? [334]

A. Well, they used to get the water from the Priest Rapids plant, we got the pump up there especially for that ranch, and for the other irrigable land that is up there west of the power plant.

Q. Who owns the pump and motor?

A. The Priest Rapids Irrigation District owns the pump and motor.

Q. Where is the pump and motor located?

A. Well, they are located down in the second floor, not the floor that you go into the plant, but down the floor below, on the south side, up there in the corner, on the southwest corner of the plant, and the intake of the pipe, it is right inside of the canal, and there is a pipe in there. You can notice that pipe when you walk over that bridge to go into the power house, well, you can notice the pipe is down in the weeds, and is tied up on a stilt for a little ways to cross over the opening of the canal, then it goes into the canal and comes out up toward——

Q. Do you know how big a pump it is?

A. Well, I know the motor, what size it is.

Q. What was the motor?

A. That was fifty horsepower.

Q. How far would you have to take the water from that pump to irrigate this land? [335]

A. Well, the land, to irrigate all that land, it should go clear up at the head of the canal, but the present ditch that is up there, that they irrigate that fifty acres in the past, well, it just reach that

(Testimony of B. Salvini.)

much land. If they got to go up and irrigate the balance of that land they got to have another lift, a little higher. The other land is kind of a slope, and it is a little higher; water wouldn't go over it at the present time with the present facilities.

Q. Is it necessary to have this land in order to operate the power canal and power plant?

A. No.

Q. What, in your opinion, Mr. Salvini, was the fair market value of this land that you described as farm land, on October 1, 1943?

Mr. Ramsey: Just a minute, now, Mr. Salvini. If the Court please, I would like to dictate a general objection at this time, perhaps in the absence of the jury. It will be a little bit lengthy.

The Court: Yes. All right, the jury may retire.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Ramsey: If the Court please, the petitioner, United States of America, objects to the introduction and reception of any and all testimony as to the value or cost [336] of any of the facilities and properties of the Priest Rapids Irrigation District acquired by the petitioner through the filing of declaration of taking 99 upon the grounds that such testimony is wholly irrelevant, incompetent and immaterial. The records and files of civil number 128 establish that at the time of the filing of declaration of taking number 99 the petitioner

(Testimony of B. Salvini.)

United States of America had, through direct purchase and filing of declarations of taking, become the fee owner of all lands within the boundaries of the Priest Rapids Irrigation District. Through the acquisition of the land the United States had become the equitable owner of all of the properties of the District of whatsoever nature or kind.

At the time declaration of taking 99 was filed the District, under the rule laid down in *In Re Horse Heaven*, held only the naked legal title to those properties in trust for the land owner, the land owner and the sole owner being the United States of America. It follows, therefore, that all that was taken from the District under declaration of taking 99 was the naked legal title to the properties covered by said declaration of taking not coupled with any beneficial interest. The market value of the naked legal title held only for the use and benefit of the land owner, the United States of America, could be nothing more than a nominal value, and this rule, established [337] in the case of *In Re Horse Heaven* by the Supreme Court of the State of Washington, makes no distinction between the irrigation and non-irrigation assets. "Because, as owner of the lands in the irrigation district, the owner immediately acquires an interest in all property of the district." As the Court knows, in the *Horse Heaven* case all of the assets and all of the properties of the district were non-irrigation properties, under the formula here being dealt with.

(Testimony of B. Salvini.)

This proceeding is very plainly an attempt on the part of the trustee to litigate with the beneficiary of the trust the question of the value of the trust property. The actual value of the trust property is of no importance in this proceeding since the beneficial use of the properties was already vested in the United States of America at the time of the filing of declaration of taking number 99, and the only thing taken by said declaration of taking was the naked legal title to said properties held in trust solely for the use and benefit of the condemnor, the United States of America.

The District is entitled to be compensated only for that taken under declaration of taking 99. If there is to be an inquiry as to the value of the interest taken, the inquiry must be limited to the fair market value of that taken, which was the naked legal title, not coupled [338] with any beneficial interest whatever. The inquiry cannot embrace in addition the beneficial use of the properties, because that use was already acquired and paid for by the government through the acquisition of all the lands within the district. The question for determination is not the value of the properties covered by the declaration of taking, but the fair market value of the naked legal title thereto. Now this, and this only, the government acquired under declaration of taking number 99, the naked legal title, not coupled with any beneficial interest whatever, and this, and this only, the government can be required to pay for in this proceeding; and if

(Testimony of B. Salvini.)

that is the case, if the government can be required to pay only for that which was taken under the declaration of taking, then the inquiry is not as to the market value or the cost of the properties, but as to what an informed buyer would pay for the naked legal title, not coupled with any beneficial use whatever, and I submit to the Court that it can only be a nominal sum.

Mr. Cheadle: Your Honor, for the defendants, we are assuming that government counsel has made his objection here, and perhaps his supporting argument, primarily for the record, in view of the rulings announced by your Honor in chambers. If we are correct, that the ruling announced by your Honor in chambers this morning is the one which the Court proposes to follow throughout the trial, we do not wish to be heard in response to the argument just made by Mr. Ramsey.

The Court: Yes, I assumed that counsel is making his record here. The court has already ruled on this particular question in passing on demurrers to the amended answers, and announced in chambers I was still of the same view this morning, and the objection will be overruled.

Mr. Cheadle: We will request likewise, for the purposes of the record, to preparing and adding and have written into the record the grounds of our exceptions to what I may call the adoption of the "Schwellenbach formula" and this might be an appropriate place to have that inserted in the record, and we will be able to furnish that to the reporter tomorrow.

(Testimony of B. Salvini.)

The Court: Yes, I think copies should be furnished to counsel so he will know what your objections are, and he may take any action he sees fit with reference to it. In other words, he should be informed at the time you put it into the record what it is. I think both sides should make their record for the purpose of appeal.

Defendant's Exception

(Inserted at this place in the record as directed by counsel and the Court.)

The defendant Priest Rapids Irrigation District notes [340] exception to the Court's rulings that compensation will not be allowed for the district's so-called irrigation properties and will be allowed only for the district's so-called non-irrigation properties; that part of the value of the district's power properties will be allocated to and included with the district's so-called irrigation properties and no compensation allowed for said part; that the value of the so-called irrigation properties shall be determined by the jury for limited purposes such as aiding in disposition of the questions arising from payment of the district's bonds with money deposited in the registry of the Court at the time of filing of the declaration of taking, to the exclusion of an award for said irrigation properties; and that the trial before the jury will be conducted accordingly. Said ruling having been announced by the Court in chambers, a procedure

(Testimony of B. Salvini.)

agreeable to counsel for both the petitioner and the defendant district, the appropriate occasion for making this exception a matter of record is in connection with the petitioner's objection and the Court's ruling, just made, since they involve the conflicting legal positions of the petitioner and defendant district and the Court's rulings thereon announced in chambers.

This exception by the defendant district is based on the following grounds: [341]

1. The Court's rulings deny to defendant district the constitutional protection of the fifth amendment to the Constitution of the United States of America: "nor shall private property be taken for public use, without just compensation;"

2. The Acts of Congress under the authority of which the Government instituted this condemnation proceeding, and which Acts of Congress are recited in the original and amended petition in Civil No. 128 and in the amended petition and declaration of taking in Civil No. 128-99, require that there be determination of just compensation for the district's properties which in this condemnation proceeding the Government has taken in the exercise of its power of eminent domain;

3. That proceedings under the Declaration of Taking Act (40 U.S.C. 258a) and its provisions for deposits paid into the registry of the Court and for vesting of title in the Government are merely ancillary to the main condemnation proceeding, and cannot be used as a device for avoiding the basic

(Testimony of B. Salvini.)

constitutional and statutory requirement that in this condemnation proceeding there be a judicial determination and award of just compensation for the district's property—a use which the Government has attempted in Civil No. 128 and which the Court's rulings partially allow; [342]

4. The pleadings and record in Civil No. 128 show that in the previous proceedings in No. 128 there has not been any determination or award of just compensation for the defendant district's properties;

5. The "acquisition policy" of the War Department and the Government's contention in support thereof, which the Court's rulings uphold in part, cannot properly be construed as more than a claim to part or all of the compensation award for the district's properties, which claim should be considered, if at all, after determination of the amount of the award and not as a device for evading determination and award of compensation; and

6. The "acquisition policy" of the War Departments and the Government's contention are based on the Government's construction of state statutes and decisions which are not applicable to the situation of the defendant district, or which at least have never been held applicable, and which this Court's rulings of June 1, 1946, and February 11, 1947, properly leave for State Court determination, as to the district's non-irrigation properties, but as to irrigation properties—erroneously

(Testimony of B. Salvini.)

decide in the Government's favor "on the basis of preliminary guesses regarding local law."

The defendant district requests that this exception not be deemed waived or jeopardized in any way during the [343] course of the trial by reason of interrogation of witnesses or introduction of evidence in a manner that is in accordance with the court's rulings to which this exception is taken.

* * *

Mr. Ramsey: The Court has overruled the objection?

The Court: Yes.

Mr. Ramsey: The further objection is urged that this witness has not been qualified to testify as to the value of these lands; second, that the lands are a portion of the power set-up and as such should not be valued separately and apart from the power properties themselves. The further objection is urged that to permit the witnesses to testify as to the value of each and every item of these properties, based upon a hypothetical use and development, inevitably leads to an addition of all the various items by the jury.

The Court: As I understand this testimony of this witness, there is evidence here now that there is eighty acres of this land through which the canal runs that is susceptible to use for farm land. In other words, its highest possible use would be farm land. I think that may be shown. However, I am extremely doubtful that this witness has been quali-

(Testimony of B. Salvini.)

fied as an expert on farm land values. He's been director of the district for a number [344] of years.

Mr. Powell: Perhaps I was erroneous in assuming that the ownership rule applied to corporation, a municipal corporation, this man being chairman of the board. I might state also, about segregating the values, I assumed this was what we would be required to do in view of the court's indicated ruling on the "Schwellenbach formula."

The Court: I think it is counsel's assertion this is part of the power plant, not a farm. Frankly, I don't know whether this rule applies to corporations or not. An individual owner may testify as to the value of his property. Whether or not that would apply to the director of an irrigation district, I don't know. Have you any authorities?

Mr. Powell: No, I haven't; I'm sorry.

Mr. Ramsey: I never heard of it, your Honor. It might lead to a peculiar situation. If you can qualify one you can qualify all. That might result in them following one another on the stand, each giving his opinion.

Mr. Powell: We only have one chairman, though, your Honor.

The Court: That is an exception to the rule that only an expert can testify as to values. The owner being closely acquainted with his own property, I think there is a personal element that isn't present here. I will have to rule, unless counsel can show me authority to the contrary, that it does not apply to a municipal corporation. Perhaps

(Testimony of B. Salvini.)

we had better bring the jury in, then. I might say I don't think the Court has definitely ruled on this last part of it. As the testimony stands, the objection is sustained.

Mr. Powell: I would like to qualify him further.

The Court: Yes, all right, I will reserve my ruling until you do ask further questions.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

Direct Examination

(Continued)

By Mr. Powell.

Q. Mr. Salvini, have you bought or sold any farm land in the Hanford Irrigation District, in the Priest Rapids Irrigation District?

A. Yes.

Q. How many different farms have you owned?

A. Oh, four or five.

Q. Four or five? A. Five.

Q. Did the Priest Rapids Irrigation District sell any property? A. Yes.

Q. And was it sold—I mean, did the directors take any part in those sales? [346]

A. Yes.

Q. Were you, or were you not, familiar with the sales and the terms of the sales of farm property in or near the Priest Rapids Irrigation District in 1943? A. Yes.

(Testimony of B. Salvini.)

Q. And do you know or were you familiar with sales of property that were comparable to the property that you've described, between the power plant and the head of the canal? A. Yes.

Q. Have you ever appraised real property?

A. Yes.

Q. And have you testified as a value witness in other cases arising in the Hanford Engineer Works area? A. Yes.

Q. In this Court?

A. I know at Walla Walla; I think in this Court too.

Q. Well, it was the Federal Court, wasn't it?

A. Federal Court at Walla Walla, and up here.

Q. And then up here? A. Uh huh.

Q. Did you testify in the Todd case?

A. Who?

Q. Todd? [347] A. Yes.

Q. And in the Baker case? A. Yes.

Q. Involving the property farmed by Joe Derigio? A. Yes.

Q. As part of your duties as a member of the Board of Directors of the Irrigation District, was it necessary or did you do anything about determining the market value of the property owned by the District?

A. Well, the Board of Directors, well, they decide what price they will have to sell the District land.

Q. What price they would have to sell the District land for? A. Yes.

(Testimony of B. Salvini.)

Q. Is there any farm property that is near the Priest Rapids Power plant? A. Yes.

Q. Were there any sales of that property?

A. There was a sale a few years before, just changed hands.

Q. Which property was that?

A. The Dam Brothers Ranch.

Q. Pardon?

A. The Dam Brothers; I think it was sold to the Priest Rapids or some development company, eastern outfit, that same ranch that is up there west of the power house.

Q. That is the Brown Brothers Ranch? [348]

A. Uh huh.

Q. Were you familiar with that sale?

A. No, I am not with the dates; I just heard the price.

Q. Do you know the Brown Brothers?

A. Yes.

Q. Do you know whether or not the information you received about that sale is accurate?

A. That's where I received the information.

Q. From whom?

A. From the Brown Brothers.

Q. Did they buy, or sell?

A. No, they were just leasing.

Q. They were leasing, but the property was sold during the time they were leasing?

A. Yes.

Q. How far is that from the property of the Priest Rapids Irrigation District you have been describing? A. First adjoining.

(Testimony of B. Salvini.)

Q. Just adjoining? A. Adjoining.

Q. From your information, Mr. Salvini, have you formed an opinion as to the fair market value of the farm land of the Priest Rapids Irrigation District, that is, lands that could be farmed, between the power plant and the head of the canal?

A. Yes.

Q. And how many acres, again, were there?

A. Say it again.

Q. How many acres were there, approximately?

A. Well, I never knew if it was—it was around eighty acres or so, probably a hundred.

Q. Between eighty and one hundred acres, is that right? A. Around eighty acres.

Q. What, in your opinion, was the fair market value of that property on October 1, 1943?

Mr. Ramsey: Now just a moment. I would like to inquire further of the witness, two or three questions, before I object or——

The Court: As to his qualifications?

Mr. Ramsey: Yes.

The Court: All right.

Voir Dire Examination

By Mr. Ramsey:

Q. Mr. Salvini, what was the total acreage of the land owned by the Irrigation District between the power house and the intake of the canal?

A. Well, if I add up the acreage on the map, but I know the lines that the Irrigation District owned, starting from down below those residences,

(Testimony of B. Salvini.)

and you go up along the fence of that ranch, and you follow that ranch up north until it turns west, and that fence is just the line of the land of [350] that ranch. The balance outside of that, it is owned by the Irrigation District, except up at the upper end is a jump up there off——

The Court: I wonder if the witness understood the question. Didn't you ask what the acres was?

Q. Yes. Do you know how many acres was owned by the Priest Rapids Irrigation District between the power house and the intake of the canal? A. I don't.

Q. Do you know how many acres were taken up of the land that was owned by the District by the right of way for the canal itself?

A. No, I don't.

Q. Now, was any portion of that canal dug, or was it all natural?

A. There was all natural, the canal; the new portion of the canal that we dug, it wouldn't touch this farm land, because it's all on the opposite side of this farm land.

Q. Well, the channel end of the canal is a natural channel? A. Yes.

Q. There was no excavating done?

A. Well, there was some excavating done, oh, probably two or three acres at the head of the canal that we used the dirt to make the dam for the water.

Q. Now, did you ever go over these lands carefully, Mr. [351] Salvini, for the purpose of de-

(Testimony of B. Salvini.)

termining what portions of them were rocky and what portions of them were, that is, the exact acreage or amount of acreage that was rocky, and the amount of acreage that was clear soil, and the amount of acreage that would require leveling, that sort of thing?

A. I look at that land several times when we was up there in company with the other Board, and I am pretty well familiar with what kind of soil is up there, and what is rocky and what is not.

Q. That isn't the question. Did you go over the entire area for the purpose of classifying and determining how much of the acreage was rocky and unfit for cultivation, and how much of the acreage was clear soil and quite fit for cultivation?

A. I didn't make that just specifically right, but we went over the land to see whether it was good for farming or not.

Q. Well, it isn't all good for farming, is it, Mr. Salvini? A. No.

Q. What percentage of it do you think was?

A. Well, as you get out the passing line of the ranch there's a stretch up there that's quite rocky, but after you get up to the dam, up above that up there she's all good farm land. [352]

Q. You mean above the intake of the canal?

A. No, not above the intake of the canal; it's down south of the intake.

Q. Yes; how far south?

A. Just the starting up there, take everything that's down below the railroad track.

(Testimony of B. Salvini.)

Q. Well, what I'm trying to get at is this, Mr. Salvini. You don't know how many acres you own up there; you didn't check over what you did own to find out how many acres was good land that could be cultivated and you didn't check how many acres was rocky and could not be cultivated, did you?

A. We didn't make a check by the acres, no.

Q. So at this time you don't know, from your examination, anything other than just a guess as to what acreage might be cultivated?

A. Well, it's more than what a guess.

Q. More than a guess?

A. Of good farm land.

Q. You mean more acreage was good farm lands than you guessed was good farm lands?

A. Yes.

Q. Well, it was a poor guess, then. I don't think I follow you. Do you mean that when you guessed that there was maybe eighty acres of good farm land, that you now think [353] there is more than that, is that what you mean?

A. Well, I know that there's eighty acres.

Q. Well, how do you know?

A. One thing is we used to, one time those Brown Brothers they used to rent forty acres, they was farming forty acres; they had it up there, easy to irrigate, then next to that, if there was a ditch to go over, well, there's another piece I know is just as big as that one, so I just figured that those two pieces together would make the eighty acres, even if there's nothing more.

(Testimony of B. Salvini.)

Mr. Ramsey: No objection to the witness answering the question.

The Court: All right. Will you read the question?

Mr. Powell: I don't think I had finished it. May I ask it again?

The Court: Well, you may if you wish. You had asked what the value was.

Mr. Powell: Well, I don't think I had finished.

Direct Examination

(Continued)

By Mr. Powell:

Q. What, in your opinion, Mr. Salvini, was the fair market value of that farm property that you have just described, that is, the value, the amount in cash, which a buyer, ready, able and willing to buy, but not required to buy, would pay to a seller ready, able and willing to sell, but not required to sell, both being fully informed, on [354] October 1, 1943?

A. At forty dollars an acre.

Q. How many acres?

A. Forty dollars an acre.

Q. For how many acres?

A. For eighty acres.

Q. \$3200.00, is that right? A. Yes.

Q. Now, did you—were you with the District when some changes were made in the turbines for generator number 2, were you on the Board then?

A. No, I don't was at that time.

(Testimony of B. Salvini.)

Q. You don't recall having anything to do with the change of the turbines?

A. I never had anything to do with the turbines.

Q. Did you have anything to do with a generator? A. Yes.

Q. When? A. 1940 or '41.

Q. What happened to the generator?

A. Well, the old generator, we didn't know what fault it was, it just run off or burned out, so we had to put in a new one.

Q. The old generator broke and had to be replaced, is that it? [355]

A. Yes, sir; yes.

Q. And what kind of a generator was the old one?

A. The old one was an Allis Chalmers.

Q. And that was replaced by——

A. General Electric.

Q. And that you say was done in 1940 or '41?

A. '41.

Q. Now, Mr. Salvini, did you or did the Board of Directors at any time enter into negotiations for the sale of the power plant?

A. We had some informal talk.

Q. You had some informal talk?

A. Yes.

Q. With whom?

Mr. Ramsey: That's objected to, if the Court please. I certainly object to going into any in-

(Testimony of B. Salvini.)

formal conversations or talk they may have had respecting the sale of the power plant. In the first place I raise the question of the right of the Priest Rapids Irrigation District to sell the power plant. If the ruling of the Supreme Court of this State in the case of Blakely vs. Priest Rapids Irrigation District has any force and effect at all, it is to the effect that a perpetual trust is imposed upon that power plant, and could not be sold without it, so I raise first the legal right of the [356] District to sell, if they were discussing sale, and I raise further the right of counsel to go into an informal conversation. That's no determination of value.

The Court: Well, of course, it is hard to tell at this stage of the proceedings just what counsel proposes to prove. It is near adjournment time. I'll excuse the jury. You may go now, and come back at ten o'clock tomorrow morning. Remember what I have said about not discussing the case among yourselves or with anyone else during the adjournment or any other recess or adjournment period, and the bailiff will take up your pads.

(Whereupon the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Powell: May I ask first if Mr. Yeager may be permanently excused?

Mr. Ramsey: No objection.

The Court: He may be excused, then, and Mr. Salvini may step down too. I just wanted to ask

after the jury went out what the purpose of this testimony is, and what you propose to prove along this line of inquiry.

Mr. Powell: It may be, it no doubt is, subject to the objection if we ask any price, your Honor please, and perhaps it is evidence that ought to be introduced in the absence of the jury, to the effect that the Irrigation [357] District and three other agencies had discussed the purchase from the District of this power plant, and the District had seriously considered the sale of the power plant as an independent item, as not being necessary for irrigation purposes, that is, under our theory of the case, convincing the court that the Schwellenbach formula as such would not apply to any part of the power plant; that the Irrigation District's purposes could be carried out without the power plant.

The Court: Well, you would have to buy power someplace else, I presume?

Mr. Powell: Correct.

The Court: I think if the formula is to be applied it would have to be applied to the situation as it existed in 1943, and the power plant then was an integral part of the irrigation system, and to a certain extent, its use was allocated and applied for pumping water for irrigation. It isn't your purpose to show the value of the power plant by showing what they proposed to sell it for?

Mr. Powell: No, your Honor. Perhaps we had better prepare an offer of proof on that, so that the record will be complete on it.

The Court: Yes, I should think that would be the logical thing to do. The Court will adjourn until ten o'clock tomorrow morning. [358]

(Whereupon, the Court took a recess in this cause until Wednesday, February 12, 1947, at 10 o'clock a.m.)

Yakima, Washington, February 12, 1947,
10:00 o'Clock A.M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: This trial is starting its third day today, and so far we have concluded with the testimony of only one witness. It seems obvious that we must move faster and with less motion or we won't finish this case and the companion case much before Easter time. I have some cases set for next week, the 19th and 20th, in which counsel, most of them, are from Seattle, and the parties and witnesses have to come from there, and it is important that I get through with this one in order that I can start that case on time if I can. I might suggest that where there are two counsel, you can line up your witnesses so that when one witness is through the next one will be ready. You can save some time that way, and I think it might move a little faster generally. Call in the jury. Let's see,

Mr. Salvini is on the witness stand. Come forward, Mr. Salvini, and take the witness stand here.

(Whereupon, the following proceedings [361] were had within the presence of the jury and one alternate juror.)

B. SALVINI

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. Mr. Salvini, what kind of work did the Irrigation District do in maintaining the transmission line?

A. The transmission line, we was doing regular work by stubbing the poles or re-setting new poles as the necessity would require, and we had it just about complete. We stubbed practically ninety per cent of the poles, so the line was in number one shape.

Q. From the time the District started to operate the pumping plant did they have any trouble with it?

A. Repeat, please.

Q. From the time the District started to operate the pumping plant did they have any trouble with it?

A. No, no; I don't think that we ever shut the water off on account of the pump. I think there was continuous delivery of water.

(Testimony of B. Salvini.)

Q. Who was the secretary or manager or engineer for the District in 1943 and '42?

A. It was a Mr. Joe Grell.

Q. G-r-e-l-l? A. Yes. [362]

Q. What did he do?

A. Well, he was running the—he was the manager, and running the power plant, and supervising the pumping plant and on the transmission line, and at the same time he was secretary of the District.

Q. Did he have charge of the records of the District? A. Yes.

Q. Where is he now?

A. Well, he died in 1944, I think it's in the spring of 1944.

Q. He died in 1944? A. Yes.

Q. Do you have the records that he kept?

A. Yes.

Q. And does that record that you have include the record showing the amount of electric power used at Coyote Pumping Station? A. Yes.

Q. Is that the only record the District has of that use now? A. Yes.

Q. I hand you a file, Mr. Salvini, and ask you if you will recognize what that file is?

A. Those here include the monthly statement of the power plant at Priest Rapids, and you separated out whatever was used for the houses up there at Priest Rapids, and the plant, whatever was used at the Beverly line, and [363] whatever the pumping plant at Coyote was using, and what-

(Testimony of B. Salvini.)

ever was left of the balance, and percentage of losses that there was from Coyote Rapids down to the switch—from Priest Rapids down to the Coyote Rapids junction.

Q. Then from the information in this file are you able to determine how much of the power was used by the District at the Coyote Pumping Station?

A. Yes.

Q. And how much was commercial power?

A. Yes.

Mr. Powell: We would like to make a tabulation from this. We'll identify the file, your Honor, so the tabulation can be made later.

Mr. Ramsey: The government has no objection to a tabulation of the records so far as the amount of power used in the pumping operations is concerned, the amount diverted there. It appears, however, that Mr. Grell's records necessarily could only have been made up as to the items from information furnished from the power plant itself. Mr. Grell was in charge of the pumping plant. The prior testimony has been to the effect that the records were kept at the pumping plant itself as to the power generated.

The Court: As to the power used, you mean, at the pumping plant? [364]

Mr. Ramsey: Yes, Mr. Grell, I assume that his records as to that are predicated upon the amount diverted and there used, but as to the power generated, the power which may have been diverted to the Beverly line, of that plant, I don't think Mr. Grell's record could be the first record.

(Testimony of B. Salvini.)

The Court: I get your point. Would your compilation include only the power used at the pumping station, at Coyote Rapids?

Mr. Powell: No, we have prepared a tabulation of the last full year of District operation, which was 1943, which includes information from that file and information from the records Mr. Yeager identified yesterday as the power plant daily records of generation of power.

The Court: Well, if I get your position correctly, you will show the total amount of power generated at the power plant by records identified by Mr. Yeager yesterday. The compilation from this record will show the power used at the pumping plant.

Mr. Powell: That is correct.

Mr. Ramsey: As to that we have no objection.

The Court: That will be understood, then, that the compilation will be made in that way. I would like to ask a question here. There's been mention made of the Beverly line. Was all the power sold at wholesale conveyed over the Beverly line, [365] or does that go someplace else?

Mr. Powell: Someplace else. The Beverly line takes off just east of the power plant, goes across the river, and goes to Beverly. That is operated by the Pacific. The Pacific purchased that power, and also other power, which they received over the high tension line at Coyote Junction switching station.

(Testimony of B. Salvini.)

The Court: And then the wholesale power sold was diverted someplace else, somewhere between the power plant and the pumping station?

Mr. Powell: Correct.

The Court: Where was that?

Mr. Powell: At the Coyote Junction, about fourteen miles east of the power plant.

The Court: I might say to the jury what the court and counsel says is not part of the evidence. I am just trying to clarify it a little. It is just part of the opening statement. It isn't evidence, and you have to have evidence in order to consider it. You may go ahead.

Direct Examination

(Continued)

Q. Can you give us generally, Mr. Salvini, the total number of acres included within the Irrigation District?

A. Around fifteen thousand acres. [366]

Q. And how many acres were being assessed?

A. Well, the District by making the rolls early he assess every land, every acres for bond assessment, then of course the land that is owned by the District or by the county is not paying assessment, and naturally on the next treasury sale in January well it will revert back to the District all the time, and be cancelled off that way.

Q. And how many acres was there in private ownership in 1943?

A. There was around 4400 acres, probably.

(Testimony of B. Salvini.)

Q. We'll have that figure exactly later, your Honor.

A. I'm not sure just of the acreage.

Q. And what was the rate of assessments on the property?

A. Now, the privately owned land, they had an assessment of sixty cents an acre or ninety cents an acre.

Q. And what was that for?

A. Well, there was two kinds of land in the District. There was some land that they had old Hanford Irrigation Water deed.

Q. Old Hanford Irrigation and Power Company deed?

A. And this land, being it was all through the negotiation and court suits, well, the Board of Directors and the people, they decided it was fair to give them a thirty cent discount on their bonds, so that's why we had sixty cent bonds for those lands and ninety cents for the other. [367]

Q. That is, you gave them the equitable credit of thirty cents per acre per year?

A. Per year.

Q. And this sixty cents and ninety cents, was that paid by lands whether they received water or not?

A. Yes.

Q. What did you charge the lands that received water?

A. We charged them six dollars an acre.

Q. Did that include the sixty or ninety cents?

(Testimony of B. Salvini.)

A. No, this sixty or ninety cents was bond, or assessment, we call it, and the other one was rent, total rent for water used.

Q. What was your bonded indebtedness in 1943?

A. Well, in 1943 when we settled it, well, there were \$165,000.00.

Q. \$165,000.00? A. Yes.

Q. Did you receive revenue from the sale of wholesale power? A. Yes.

Q. What did you do with that revenue?

A. Well, that revenue, first we put it in the bond fund until we built up that bond fund high enough so we could make two payments, and we tried to keep the bond payments always at that level, and the balance, well, we could use it for other needs and improvements and repairs of the [368] different instrumentalities of the District.

Q. Do you know, Mr. Salvini, how many different families there were residing in the Hanford—White Bluffs area in 1943?

A. How many families?

Q. Yes, just approximately how many families.

A. I don't know. I know the census of the town that there was in 1940, but I never count the peoples, so I don't know.

Q. Did that include the census of the people on the farm?

A. The people, there was around 1500 peoples in the two towns, but I never got down to figure out how many families there was.

(Testimony of B. Salvini.)

Q. Around 1500 people in the area of White Bluffs and Hanford, is that correct, inside the District?

A. Well, they was all living on the land inside the District, but some of the land was outside the District.

Q. Well, by that you mean it was excluded from the District; it was still under the canal, wasn't it?

A. Yes.

Q. The jury did not see the communities of Hanford and White Bluffs. Could you tell us, were there ordinary facilities for your communities there? That is, you had stores?

Mr. Ramsey: If the Court please, I don't want to [369] inject objections all the time, but it seems to me we're wandering far afield when we get into the matter of what there was in the towns, and that sort of thing. We're confronted with just one problem, and that is the evaluation of the facilities of the District.

The Court: Yes; I don't see the materiality of it, unless it is to apply to this eighty acres of farm land.

Mr. Powell: No, I can explain briefly. The only reason for it, the jury did not see the towns; what was or had been there. I thought perhaps a brief description might be in order. If counsel objects I won't press it.

The Court: Well, I'll sustain the objection. I think it is going too far afield, perhaps.

(Testimony of B. Salvini.)

Mr. Powell: I would like to make the offer of proof that we mentioned last evening. Shall I wait until counsel has finished the cross examination?

The Court: Yes, I think we might put that in at recess time, at 11 o'clock.

Mr. Powell: That's all, then, for now.

The Court: By the way, I wonder if you could supply a copy of that to Mr. Ramsey? Do you have copies of it, two copies?

Mr. Powell: Yes.

The Court: You can supply the court with one, and [370] Mr. Ramsey with one, and we can look it over, and he can decide whether he wants to object, and on what grounds. Will that be acceptable, Mr. Ramsey?

Mr. Ramsey: Yes, your Honor.

The Court: And then we can avoid reading it. We can give it to the reporter. You may cross examine.

Cross-Examination

By Mr. Ramsey:

Q. Mr. Salvini, you stated that there was about 1200 acres in the Priest Rapids Irrigation District being irrigated from the District facilities in 1943 when the government took over the area?

A. The year before, I think it was around 1200 acres.

Q. 1200; now, that left about 12,000 acres in the District that were not being irrigated?

A. Well, probably there was 12,000 acres that

(Testimony of B. Salvini.)

never was irrigated, because of sage brush in the district, and they're pumping water from their own wells.

Q. The area that was not at that time under irrigation, however, was subject to sale as irrigated land, was it not? A. Yes.

Q. As a matter of fact, at the time that the government went in there, all of the lands of the District which the District had acquired through foreclosure and otherwise had been optioned to the **Priest Rapids Development [371] Company**, and the Priest Rapids Development Company were engaged in a colonization scheme at that time to bring in settlers into the Priest Rapids Irrigation District, were they not?

A. Not exactly in the way you want to have it; the Priest Rapids Development Company, they had the option of the land up there, but they were specified just what land they was supposed to sell.

Q. Yes?

A. And there was practically 5,000 acres that didn't was on their option at all, because we figured that land, it didn't was classified as irrigable land, and it was up north, toward Vernita.

Q. Now, let's get this straight. There was about 5,000 acres in the District that was optioned to the Priest Rapids Development Company with the understanding it was not to be sold as irrigated land?

Mr. Powell: I would like to interpose an objection. That is not material to the value case. It seems to present an issue that is outside the issue of the case.

(Testimony of B. Salvini.)

Mr. Ramsey: I would like to be heard on that.

The Court: I understand the purpose of that. I will overrule the objection. Exception allowed the defendant.

(Whereupon, the reporter read the last previous [372] question.)

Cross-Examination

(Continued)

Q. Is that correct? A. Uh huh.

Q. However, as to the other six thousand, six or seven thousand acres, it was optioned to the Priest Rapids Development Company with the understanding that it was to be sold, if possible, as irrigated land? A. Not exactly.

Q. Well, Mr. Salvini, now, the District had these lands which they had acquired?

A. Well, I wish I would have the copy of the contract, and if you read it down, you see there was a provision in there that they were limited to the amount of sale of the land, and to the place where they would be selling, because we would just allow them to sell the land wherever we had provision to deliver them with water, and if we didn't have any provision, if they make any sale then the District was forced to deliver water to those places, unless they build their own canals to come to the water.

Q. In other words, the District didn't want the lands sold so far away from the existing facilities that they would have to put in additional facilities, is that correct?

(Testimony of B. Salvini.)

A. Not—the District won't have to put in any facility.

The Court: I don't think the witness understood [373] the question, probably. Let him read the question back. I'm not sure you understood the question.

(Whereupon, the reporter read the last previous question.)

A. No, the District is not—they don't want the land sold—the District want the land sold, but the District was not forced to go and build the facilities to irrigate those lands if they didn't have it at present when the land was sold.

Q. But it was the purpose of the District to have those additional acres susceptible to irrigation in the District colonized and developed?

A. Yes.

Q. And if all the land that was available there for use as irrigated land was sold, instead of 1200 acres the District would have been called upon to deliver water to approximately 7500 or 8000 acres, wouldn't it? A. Yes.

Q. Now, and at the time that the government took over the project there that scheme of colonization was going forward, wasn't it?

A. Not at the time, not right at the time of the government, because really the purpose of that contract was not active at that time.

Q. Well, then, at what time, and why not at that time? [374]

(Testimony of B. Salvini.)

A. Well, in the way that we got that agency for colonization it was during the W. P. A.

Q. Yes.

A. And at that time, well, we tried to get a loan to rehabilitate, to put in canals, pipe lines, to irrigate all the land that there was irrigable in the District, and one of the provisions that the office there, that Department, they wanted, they thought we should have an agency for that purpose, so we hired the Priest Rapids Development Company for that purpose at that time, because that thing failed, because before we had all the arrangements made, well, there didn't was any more money appropriated for that purpose, so the thing failed, and really, that contract with that agency for colonization, why, we just figured it was at an end, but we never cancelled, and let it go to sell land if they want to.

Q. As a matter of fact, right up to the time the government took over the Priest Rapids District, the Priest Rapids Development Company was selling land in there wasn't they? A. Yes.

Q. And there would have been a large amount, several hundred acres, five or six hundred acres of land, that would have been sold and colonized immediately if the government hadn't come in there, isn't that true? [375] A. Yes.

Q. They had that block of land all dealt with were prepared to turn it over to the new purchasers at the time that the government came in there?

A. Yes.

(Testimony of B. Salvini.)

Q. Now, Mr. Salvini, I wish you would step down here to the blackboard or easel for a minute. I am not sure that I am just straight on this transmission line deal. What does this broken line here represent, the line with the little X bars across it?

A. That is the transmission line.

Q. That is the transmission line. Now, that black at the extreme left hand side of the area, or the west portion of the area, shown on the Defendant's Exhibit 1, at the Priest Rapids power plant and on above——

A. At the power house.

Q. Well, what is this area shown on above the power house?

A. That is a part of the canal that comes down to the power house.

Q. Is that a transmission line there?

A. No, the transmission line starts at the power house.

Q. Starts at this point? A. Yes.

Q. There isn't any transmission line, then, running on up from below the power house on to the west? [376] A. No.

Q. So as to that part, that does not represent a transmission line?

A. Not above the power house. The transmission line started right to the power house.

Q. Yes. Could that be that showing there by the railroad?

A. Well, the railroad is coming along, some places it is just about parallel to the transmission line.

(Testimony of B. Salvini.)

Q. Yes. Now, the power line runs from the power house down the river to Coyote Junction at this point, is that right? That is, the 66,000 volt line? A. Yes.

Q. Now, does it extend beyond that point?

A. Not ours; ours stops right there.

Q. Yes. Is there an extension of that power line from that point on to the White Bluffs—Hanford area?

A. The Pacific Power has got that power line that goes down from there.

Q. Yes. Now, as to the power which is delivered to the Pacific Power and Light Company, other than that which is delivered to the Beverly line here at the power house, is that power sent down this line to this point and there turned over to the Pacific Power and Light Company? A. Yes.

The Court: "This point," Mr. Ramsey, you had [377] better indicate that for the record.

Mr. Ramsey: Coyote Junction.

The Court: All right.

Cross-Examination

(Continued)

Q. The District owns the power line from the power house to the junction here? A. Yes.

Q. It also owns a stub line down to the pumping plant? A. To the pumping plant.

Q. Now, getting back to the power canal, Mr. Salvini, I believe you stated that that was a natural channel, that power canal?

A. One opening is.

(Testimony of B. Salvini.)

Q. One which?

A. One opening it is, or at least that is what I was told all the time, and you could see it up there.

Q. Well, you cut another channel, the District had another channel cut from the river to the canal, up at the intake? A. Yes.

Q. Now, aside from that new cut channel there, is the rest of the canal a natural channel?

A. Except the part down by the power plant, you can see where they cut it, but the rest of the place, down to the spillway, well, it's a natural channel. [378]

Q. Natural channel. Speaking of that spillway, that consists of nothing more than a concrete wall along there?

A. Well, there's a concrete well, then we had a place up there about 100 feet wide, that is, we can regulate the water; whenever is not enough water to go down, why, we can set the plank up there, four-inch plank in the slot in the cement, every twenty feet there's places to set it in, and we can regulate to get more water down to the plant if we want it.

Q. As a matter of fact, if that wall wasn't in there, your water would escape over that natural outlet there at a much lower level than it does down there?

A. No, even if it wasn't there the water, until it gets up to such a level, will never get out of there.

(Testimony of B. Salvini.)

Q. That's true, but this is a natural low place in the wall between the river and the power canal, isn't it?

A. I was told that place was made for that purpose.

Q. Well, that's not answering my question.

A. It's lower now, because naturally we use it for a spillway, but it's not lower than the canal.

Q. You did not cut a spillway, did you?

A. No.

Q. Instead of cutting a spillway, they put in a concrete wall there?

A. The District put in a concrete wall. [379]

Q. I understand that perfectly, but the effect of that wall is to retain the water in the power canal, isn't it? In other words, if the wall wasn't there, the water as it raised in that power canal would escape at a much lower level than it does with the wall in there?

A. No, I don't think it is for that purpose that wall is there; it is just because it is gravel there; if we didn't build up that wall, when the water was up high escaping there it would destroy more bank.

Q. As a matter of fact, that wall was put in to retain the water in the channel, rather than let the water escape over any spillway, wasn't it?

A. Well, that's one of the purposes, too.

Q. Yes. Now, Mr. Salvini, you placed a value of \$40.00 an acre on this land belonging to the District up there at the power site; that is, as to about eighty acres of it?

A. Uh huh.

(Testimony of B. Salvini.)

Q. In your opinion, that represents the fair market value of that particular eighty acres?

A. Yes.

Q. Isn't it a fact, Mr. Salvini, that down in the Priest Rapids Irrigation District itself, that all of these thousands of acres of undeveloped land lying below the ditch and susceptible of irrigation could be bought for \$10.00 an acre? [380]

A. I don't know about that.

Q. Well, I think you do, Mr. Salvini.

A. Not all could be bought for \$10.00 an acre.

Q. Well, I didn't say all. I'm speaking now of the undeveloped, uncleared, unlevelled land down there in the Priest Rapids Irrigation District.

A. Yes.

Q. Below the level of the ditch, which you had under option to the Priest Rapids Development Company, and that was for sale; that could be bought for \$10.00 an acre, couldn't it?

A. Yes.

Q. Thousands of acres; is it your opinion that these eighty acres located up there up that canyon, in that isolated spot, was worth four times what the land was down between or near White Bluffs and Hanford, under the District?

A. Well, it could be sold for that price any time, that land up there.

Q. Do you think that the purchaser of prospective irrigated land would prefer to have a piece of land up there in that isolated spot, rather than down in the District?

(Testimony of B. Salvini.)

A. Well, we refused to sell part of that land up there.

Q. Oh, yes?

A. Because we don't want to sell it. If we sell it, then probably it might hurt us sometime in the future when we [381] want to work on the canal.

Q. Yes, but that still isn't answering my question. Do you think a man interested in acquiring an irrigated ranch would be willing to pay more for undeveloped land up in that area, in that isolated spot, in that canyon, than pay \$10.00 an acre, or one-fourth as much, for the irrigated land down in the Priest Rapids Irrigation District close to the two towns?

A. All the good land would be bought, no matter what it is. You find isolated spots worse than this, you find people interested in it, and if that's a good place, it is just as good as in the valley, and it is worth that much.

Q. Is it your contention that the lands down in the District weren't good land?

A. There was a lot of good land, and a lot of bad land.

Q. Yes, of course. Now, let's get back to my original question, and have an answer to it. Is it your contention that the prospective buyer of an irrigated tract of land would be willing to pay four times as much for an acreage up that canyon, fifteen or twenty miles from any town, in that isolated spot, as he would be willing to pay for good land that could be irrigated under the Priest Rapids Irriga-

(Testimony of B. Salvini.)

tion District in close proximity to the two towns?

A. Well, I still think that location up there, the way the [382] land was situated, he would pay that price for that land.

Q. You think a prospective buyer would be willing to pay four times as much?

A. Well, if you get the same kind of land down below, you couldn't get them at that price.

Q. Well, you had seven or eight thousand acres for sale. Wasn't there any good land in that?

A. You never find eighty acres as solid as that, just as even, land like it is up there.

Q. Well, you could block up any amount of acreage down there in the Priest Rapids Irrigation District, couldn't you, if you wanted to buy it?

A. Well, you could buy lots of acres, yes, but not as good as that one at that price.

Q. Now, Mr. Salvini, prior to 1942 did the Priest Rapids Irrigation District operate their power plant during the winter months?

A. Before we made that, do that work up there in the canal, some winter, well, we shut down one generator, just run one.

Q. That doesn't answer my question. Prior to 1942 did the Priest Rapids Irrigation District operate the power plant during the winter months?

A. Well, there was some winters during the construction at Coulee Dam when they were lowering and levelling the [383] water, that probably we shut down for a short period, but we shut down

(Testimony of B. Salvini.)

practically every spring for a month or so, during the winter, to make the repairs that are needed every year.

Q. Well, please, Mr. Salvini, can I have an answer to my question?

A. Well, yes, we shut it down for that.

Q. Prior to 1942 did the Priest Rapids Irrigations District operate during the winter months the Priest Rapids Power Plant? Now, did they, or did they not?

A. Some years we did not.

Q. How many years?

A. But I don't know, unless I look at the records, just when we did.

Q. Now, the District at various times had some trouble with that power canal up there, didn't they?

A. Have trouble?

Q. Well, high water took out your wing dam on one occasion, didn't it?

A. Not during our time, not during our operation. That happens a long time ago.

Q. Yes. The old channel into the canal silted up, did it not, so that you had to cut a new channel, entrance channel?

A. I don't think it was for that purpose that we cut the [384] new channel.

Q. Well, didn't the old channel silt up until you got very little water through it?

A. Well, I was told by Marvin Chase that in 1928 or 1930 or 1931, Marvin Chase used to be a receiver for the canal, and he went in and worked

(Testimony of B. Salvini.)

and cleaned it out, and after that we never was bothered with sand any more at the head of the canal.

Q. Why did you cut the new channel?

A. Well, that was the suggestion that our engineer give us at the time that we had to shut it down to put in the new generator; he says "Now, you got the time, you could cut the new opening up here and you would get a little lower elevation." I think that's the reason, probably, and you would get more even water from that.

Q. Now, as to the water charge on the acreage down in the Priest Rapids Irrigation District, I believe you stated that your charge was \$6.00 per acre in addition to the 60 cents or 90 cents of bond, interest and retirement fund? A. Yes.

Q. In 1943 there was an assessment made of \$10.00 per acre, wasn't there?

A. Yes, if we would operating, well, we would add \$10.00 an acre in 1943 [385]

Q. In 1943 you had a total bonded indebtedness of \$165,000? A. Yes.

Q. What was your warrant indebtedness?

A. About \$12,000.00, maybe, around eleven or twelve thousand.

Q. Well, now, as a matter of fact wasn't your total warrant and bonded indebtedness \$185,000.00?

A. In 1943?

Q. Yes.

A. Well, now, I knew that when we settled with the government we had \$165,000 more to redeem,

and naturally every year why we were buying back bonds, and we had the money for it. Maybe there was. If there was that much, well, of course we had the money to pay it, and we used it.

Q. The total indebtedness of the District was \$185,000.00, wasn't it, that is, warrant and bond?

A. Yeh, yeh, that's right.

Mr. Ramsey: I think that's all.

The Court: Any further questions of this witness?

Mr. Powell: No, your Honor.

The Court: That's all, Mr. Salvini.

(Whereupon, there being no further questions, the witness was excused.)

HUGH B. TINLING

Called as a witness on behalf of the Defendant,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. State your name, please.

A. Hugh B. Tinling.

Q. Where is your home?

A. Spokane, Washington.

Q. In what business are you engaged?

A. Electrical Engineering and construction.

Q. Do you have a firm there?

A. Yes, I am a partner in the firm of Tinling and Powell, and I am general manager of the firm of Wayne-Burnaby, Inc.

Q. Wayne-Burnaby, Inc.?

A. That's correct.

(Testimony of Hugh B. Tinling.)

Q. Is their office in Spokane too? A. Yes.

Q. Where is the plant of Tinling and Powell?

A. Located at East 706 Sprague Avenue, in Spokane.

Q. In what kind of business is your firm engaged?

A. Engaged in electrical engineering and electrical construction.

Q. Have you taken any college work in engineering, Mr. Tinling? [387]

A. Yes, I graduated from the Washington State College in 1928.

Q. And what degree?

A. Bachelor of Science in Electrical Engineering.

Q. How long have you been working in or with any engineering work? A. Since 1928.

Q. And was your father an engineer?

A. Yes, my father was an engineer engaged in the same business prior to that time; in fact, since 1909.

Q. Did you work with him? A. Yes, sir.

Q. What kind of business was that that you worked in?

A. That was electrical construction, engineering, estimating, maintenance, and repair.

Q. Do you represent any wholesalers of electrical or generating equipment?

A. Yes, we're factory agents for the Electric Machinery Manufacturing Company of Minneapolis, who manufacture generators and switch boards, motors, control equipment.

(Testimony of Hugh B. Tinling.)

Q. Have you ever designed electrical equipment for any power plants, Mr. Tinling?

A. No, I have not designed electrical equipment. I have designed power plants involving the use of electrical equipment. The design of the electrical equipment itself [388] is usually done by the manufacturer of the equipment.

Q. And what plant did you work on?

A. I designed and sold equipment and had charge of the installation of a hydro-electric plant for the Pend Oreille Mines and Metals Company, and had charge of the design and construction of another plant for the village of Bonners Ferry, Idaho, and have done similar work for the town of Troy, Montana.

Q. And about what is the size of the Pend Oreille Mines and Metals Company plant?

A. The Pend Oreille Mines and Metals Company plant is designed for an ultimate capacity of six thousand horsepower, approximately forty five hundred KWA generator capacity in two units, and one unit of twenty two hundred and fifty KVA was installed at the time the plant was built; left space for a second unit.

Q. How do you transfer or convert KVA to KW, Mr. Tinling?

A. Well, your converting your KVA to KW is a little difficult to explain to the layman. In alternating current machinery a certain amount of power is required, a certain amount of current is required

(Testimony of Hugh B. Tinling.)

to produce mechanical power, and a certain amount of current is required to magnetize the iron in the motors, and the percentage the mechanical current bears to the total is expressed in a percentage which nominally is called power factor, and [389] this KW is the mechanical portion of it, and the KVA is the total of the mechanical plus the magnetizing current.

Q. And how does this 2250 KVA plant at the Pend Oreille Mines and Metals compare with the Priest Rapids plant?

A. Well, the individual generators are about fifty per cent larger; however, they are about the same speed, they are the same voltage, and the plant operates at approximately the same head.

Q. So in that respect the plants are very similar, are they?

A. That's right.

Q. When was that plant built?

A. That plant was built in 1938.

Q. Is it now in operation?

A. Yes, sir.

Q. And have you had any other experience in installing electrical equipment, Mr. Tinling?

A. Yes, we've installed considerable amounts of electrical machinery in industrial plants and substations, and, oh, diesel electric plants, some steam work; the Wayne-Burnaby, Inc., of which I was general manager, installed some 200,000 horsepower of equipment in what is known as the Aluminum Rolling Mill, Trentwood, Washington, about fifteen miles east of Spokane.

(Testimony of Hugh B. Tinling.)

Q. How much did that involve; that is, how much equipment? [390]

A. In horsepower?

Q. No, in dollars?

A. Well, the total installation ran around eight million dollars.

Q. Eight million dollars?

A. Yes, sir.

Q. Did that include transformers, wiring, motors, and generating equipment?

A. That includes motors, generator sets, transformers, sub-stations, power lines, switch boards, lighting; everything required to make a complete rolling mill job.

Q. Have you ever installed or built or taken contracts to build a transmission line?

A. Yes, sir.

Q. Could you tell us some of the jobs that you had in that respect?

A. We took contracts in 1937, up through 1940, for approximately six hundred miles of transmission lines, the bulk of that being for the Rural Electrification Administration cooperatives; one job near Great Falls, Montana, for one hundred miles, and I think we built about one hundred twenty-five miles south of Missoula, Montana, for the Ravalli County Electric Cooperatives.

Q. That's R-a-v-a-l-l-i?

A. That's right; and we built about three hundred and twenty [391] five or three hundred and fifty miles in the vicinity of Lewiston, Idaho, for the Clearwater Valley Light and Power, and we

(Testimony of Hugh B. Tinling.)

built a distribution system for the Army Engineers at Camp Adair, Oregon, a contract for about four hundred thousand dollars.

Q. And did you make some installations in Okanogan and Grant County?

A. Yes, we've built lines and substations for the Public Utility District Number 1 in Grant County, and Public Utility District Number 1 in Okanogan County, and also for the Washington Water Power Company in both of these counties.

Q. What firm did the work?

A. Tinling and Powell.

Q. Have you ever made inventories in rate cases, Mr. Tinling?

A. Yes.

Q. Where?

A. We just completed a study for the Bunker Hill and Sullivan Mining and Concentrating Company at Kellogg, Idaho, who own the electric distribution system at that point. We have also made appraisals of industrial plants, and an appraisal of the utility company lines in the Grant County area for the Washington Water Power Company, and have done some appraisal work for various R.E.A. cooperatives. [392]

Q. Did you go over the Priest Rapids Irrigation District properties in 1943?

A. Yes, sir, I went through all of it.

(Short Recess)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: Do you wish to make this offer of proof now, Mr. Powell?

Mr. Powell: Yes, your Honor.

The Court: You have had a copy of this, have you, Mr. Ramsey, to give you an opportunity to read it over?

Mr. Ramsey: Yes, your Honor.

The Court: It may be understood, then, that the offer of proof is in accordance with the typed sheet that has just been handed to the reporter.

OFFER OF PROOF

The defendant, Priest Rapids Irrigation District, offers to prove that it had under discussion and consideration three possible sales of the power plant.

A. In the Spring of 1939, a delegation from the City of Ellensburg visited the Priest Rapids Irrigation District Directors and the Ellensburg delegation met with [393] J. D. Ross at Coulee Dam. The negotiations, however, did not result in any sale.

B. In the Spring of 1942, the Bonneville Administration, through Mr. Arrowsmith, discussed the purchase of the District power plant. Thereafter, Mr. C. Marc Miller, a real estate salesman of White Bluffs, went to Portland and discussed the sale and returned and asked for a contract for the

sale of the plant allowing him a commission. The negotiations, however, did not result in any sale.

C. In January of 1943, the Pacific Power & Light Company representatives met with the District Directors at the substation of the Power Company at Hanford and discussed the purchase of the plant. The District Directors were requested to state their proposition of sale, which they did, and the Power Company representatives advised the Directors that they would confer. Before anything further was heard from them, the condemnation action was started.

Mr. Ramsey: The government objects to the offer of proof upon the grounds and for the reason that value cannot be established by the showing of negotiations for sale not consummated, and for the further reason that the District was without legal authority to dispose of the power plant of the District. In the case of *Adamson [394] vs. Black Rock Power and Irrigation Company*, decided by the Ninth Circuit Court of Appeals, and found in 297 Federal Reporter at Page 905, this very question was presented, that is, the question of whether the power plant could be sold, relieved of its duty and obligations to the lands now included in the Priest Rapids Irrigation District and sold by the Hanford Power and Irrigation Company. The Federal Court in that case defined the question to be passed upon in the following language:

“The chief question is whether, by the trust deed or their deeds of purchase, appellants acquired any variety of right, title, interest or claim in, to, or upon the instrumentalities.”

and the Court went on to comment upon the evidence in the case, noting that the Hanford Power and Irrigation Company, in order to sell land within the District, issued pamphlets advertising the land for sale, including a perpetual water supply, and made reference thereto, and included in the pamphlets photos of the power plant and canal and referred to the function of the plant to supply water to the irrigation system. The court further noted that the deeds from the Hanford Power and Irrigation Company to the individuals provided that the water rights were not personal property, but were appurtenant to the lands. The court then concluded:

“As we view this instrument in the light of the circumstances of its execution and thereafter, the statements, reservations, stipulations, and contract therein constitute [395] a declaration by the Hanford Company that it holds these instrumentalities in trust to the extent necessary for the purpose of water supply to prospective vendees of its lands, and that the vendees in the vendor settlor of the trust may repose confidence it forever will apply said instrumentalities to their use and benefit.”

The Court: Just a minute, Mr. Ramsey. Have you concluded making your objection to the offer of proof here?

Mr. Ramsey: Not entirely, your Honor.

The Court: It seems to me that this is argument in support of your objection. I would prefer that you make objections to offers of proof, and then

separate your argument. I may not care to hear your argument. If I am already with you there is no use in taking the court's time in putting in this argument.

Mr. Ramsey: The principal objection to the offer, then, is predicated upon the fact that the power plant of the Priest Rapids Irrigation District has imposed upon it a trust or obligation in perpetuity to supply power for use for pumping purposes, to irrigate all of those lands sold by the Hanford Power and Irrigation Company under its contracts to the settlers, and there is imposed further an obligation upon the power plant to supply water for the use of the holders of lands, the owners of lands within the Priest Rapids Irrigation District other than those which hold by deed from their grantors, from the [396] Hanford Power and Irrigation Company, and that this trust or obligation imposed upon the power plant is such that the District could not legally offer for sale or sell the power plant, free and clear of that trust imposed upon it by law.

The Court: Do you wish to be heard in support of your offer, Mr. Powell?

Mr. Cheadle: If the Court please, the reasons given for the objection made by the government to this offer of proof are based principally upon the Black Canyon case, which involved one of the predecessors in interest of the Irrigation District, and we submit that there are substantial differences between a private company which owned this plant and at first owned the lands and then sold them,

considerable difference between the legal characteristics of that entity and the legal characteristics of an Irrigation District. We fully realize that an Irrigation District has the obligation to administer its works and retain control of them, to supply the lands within the District with water, but we respectfully submit that the statutes of the State of Washington and the decisions of the Washington Supreme Court fully recognize that an Irrigation District may sell its surplus property, namely, property that is not required to supply the lands within the District with water, and we submit that if these negotiations had developed to the point of sale, and if the District had found a substitute source of pump power which it could have purchased, from Pacific Power and Light Company or perhaps from Bonneville, then it would have been in a position in which it could have sold, merely by action of the Board of Directors, upon posting of notice, the power plant, and certainly and in any event could have sold the power plant following a District election at which the question were put to the land owners in the District. Consequently, on that ground, and as I understood argument it was the only ground submitted for the objection, we submit that the law is to the contrary.

The Court: Well, I think there was another phase of the objection here, that if it is offered for the purpose of showing the value of the plant, that it isn't competent because it is too speculative, but as I understand it, it is offered for the purpose of

showing that since the District might have sold the power plant separately, that the power plant should not be considered as a part of what we have termed the irrigation assets or property of the District.

Mr. Cheadle: That is correct, your Honor.

The Court: The objection will be sustained. The Court takes the view that regardless of whether or not [398] the District had the legal right to sell, that it would be too speculative to go into the question of whether or not the sale might have been made, and it might have been separated, and that power at a certain lower cost might have been procured, or at some other cost, from some other source. I think we should regard this situation as it existed at the time of the taking by the government, and at that time the power plant was an integral part of the irrigation system, and was devoted to irrigation purposes to the extent of the power used for pumping water for irrigation, and on that basis the objection will be sustained. Exception is allowed to the Defendants. Call in the Jury.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

HUGH B. TINLING

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. Mr Tinling, have you had experience with the repair work on electrical equipment also?

A. Yes. The firm of Tinling and Powell operate electric repair and service facilities in Spokane for re-winding, repair of motors and generators, transformers, and for [399] electrical testing of insulation.

Q. Did you have any government or Navy contracts for such repairs during the War?

A. Yes, we were prime contractor with the Navy Department for re-wiring and overhauling of battle-damaged electrical equipment from Pearl Harbor.

Q. That is equipment on the battleships?

A. That's right, electric motors and control equipment.

Q. Did you inspect the electrical equipment of the Priest Rapids Irrigation District in 1943?

A. Yes, sir.

Q. Who was with you when you made the inspection?

A. Mr. Hall was with me part of the time. Certain portions of it Mr. Hall and I were together, and other portions I made the inspection alone.

Q. How long were you there?

(Testimony of Hugh B. Tinling.)

A. I think—this is several years ago; I believe it took about three days to inspect and inventory the equipment.

Q. And have you since that time, or did you at that time, or subsequently, get the value of the property that you inspected?

A. Yes, in I believe in April, 1943, I prepared estimates of the values of the power plant and the transmission lines and the substations and the turbines and pumps.

Q. Were those figures as installed?

A. Yes, sir.

Q. Now, you said in April, 1943. What would be the difference in the value of the equipment as of that date and as of October 1, 1943?

A. I don't believe there would be any difference in values. That was during the period that the O.P.A. had frozen prices on both material and labor, and I don't believe there is any change, even beyond that period, up to the time that the O.P.A. gave special permission, or until—

Q. What was that again?

A. I say, there were no changes in machinery or equipment except where the O.P.A. made specific authorization, and none was made on that type of machinery until a year or so later.

Q. The figures that you have prepared, Mr. Tinling, are figures of the cost of reproducing the equipment in place?

A. Yes, sir.

Q. They are figures as to installing this equipment, is that correct?

A. That's right.

(Testimony of Hugh B. Tinling.)

(Whereupon, "Cost of Reproduction New, Electrical Equipment, by Hugh B. Tinling" was marked Defendant's Exhibit No. 9 for identification.)

Q. Mr. Tinling, I hand you Defendant's Identification 9, and will ask you if you know what it is?

A. This is a copy of the estimates which I prepared on the value of the electrical and hydraulic equipment owned by the Priest Rapids Irrigation District during that inspection trip in April, 1943.

Q. Do you have the notes with you that you made then? A. No, I don't.

Q. Well, are they in the courtroom?

A. Pardon?

Q. Are they in the courtroom?

A. I don't have the original notes, no.

Q. You have notes that you have taken from the original pencil notes, have you?

A. That's right.

Q. Would you get them so that you may compare them if the question comes up.

A. Yes, sir.

Q. Now, referring to the exhibit, page 1, you have the generating plant and equipment?

A. Yes, sir.

Q. And does the identification contain an inventory of all of the electrical equipment in the power plant? A. Yes, sir.

Q. Now, turning to page 6, that refers to what, Mr. Tinling?

(Testimony of Hugh B. Tinling.)

A. That's a breakdown of the unit cost of various poles and structures used in the transmission line, reproduction [402] cost.

Q. And page 7 is what?

A. Page 7 is the reproduction cost on installing the power line, conductors, and also the anchors for guying the pole structures.

Q. Now, what are pages 8, 9, and 10?

A. 8, 9, and 10 are the inventories of the Coyote Pumping plant, the substation, and motors and pumps and accessories, switch boards, telephone system, spare parts, wiring, telephone system for the operators' houses.

Q. On Page 4 you have the transmission line?

A. Yes, that is a summary of the breakdown of the items on pages 6 and 7.

Mr. Powell: I might state to your Honor that we haven't segregated the last three pages from the other. The last three pages, however, refer to the pumping plant.

Q. Now, the column of figures on the right hand side of the page, Mr. Tinling, and your totals on pages 5 and 10, refer to what?

A. The individual price is on each page, on the right hand side. It shows the values of the various items that are described, and the total on page 5 is the total value of the power generating facilities and transmission line, and the totals on page 10 shows the value of the electrical and pumping equipment and accessories for the pumping [403] plant.

(Testimony of Hugh B. Tinling.)

Q. When you say values, does that refer to what value?

A. Well, what I call replacement cost.

Q. That is replacement cost new, is that correct?

A. That's right.

Q. Pardon? A. Yes.

Q. You haven't in this identification 9 endeavored to put any depreciation percentage in, is that correct? A. That is correct.

Mr. Powell: We would like to offer the identification in evidence, if your Honor please.

Mr. Ramsey: Objected to, if the Court please. Objected to first upon the grounds that the identification number 9 simply is a compilation of what the witness says is the cost price of various items of electrical equipment at the Priest Rapids Irrigation District power plant, on the KV line, 66,000, I believe, and at the pumping plant. If this testimony is to be on the basis of the value of the property at the time of the taking, and we are to proceed upon the theory of replacement cost less depreciation, then the figures here are not admissible for any purpose. The value would necessarily be the replacement cost less depreciation. The figures here appearing are purely the replacement cost, with no [404] depreciation added. It is objected to for the further reason that the witness cannot testify by placing in evidence a compilation of what he proposes to testify to. To do that would be to place in evidence all of the matters on which he intends to testify, without giving to the opposing

(Testimony of Hugh B. Tinling.)

party the opportunity to object to any portion of the testimony, or to keep out of evidence any portion of the testimony. It is already in the compendium that is offered here. The further objection is made that there is included in this the pumping plant and the transmission lines, which it is contended are purely irrigation assets, and should not be valued for any purpose at all. The further objection is made that the District is entitled to merely nominal damages on any and all assets, including the power plant. Further objection is made that if the Court holds that the District is entitled to compensation for assets of the District not wholly used in pumping water upon the lands, then the measure of the recovery which the district is entitled to could only be the market value of those facilities not entirely used in placing water upon the land with the trust imposed upon them to supply the water to the land. In other words, with regard to the power site, it would be what would an informed buyer pay for that power site, having in mind his obligation to supply at cost the power [405] necessary to irrigate the lands under irrigation, plus the lands that in the future might come under irrigation, and not a division of the reproduction cost less depreciation of the plant itself. I submit to the Court that this can only be illustrative.

The Court: Have you finished your objection, Mr. Ramsey?

Mr. Ramsey: Yes, but——

(Testimony of Hugh B. Tinling.)

The Court: If you wish to argue it, we had better argue it in the absence of the jury. As I told you before, I prefer to have you make your objections to proffered evidence as an objection, and then we will follow with the argument.

Mr. Ramsey: This is objection, if the Court please.

The Court: Your objections are very argumentative, Mr. Ramsey. Let us know what you object to, and on what ground. If you haven't finished, go ahead with your objection on the record here.

Mr. Ramsey: The objection is made that the exhibit 9 is inadmissible for any purpose unless it is admissible as illustrative of the testimony of the witness, and that the witness has not yet testified, so that it is not admissible for that particular purpose.

The Court: This proffered exhibit, as I understand [406] it, represents the opinion evidence of this witness as to the reproduction cost new of the property involved here, at least to the extent listed in the exhibit, based upon a study which he has made of this property in 1943.

Mr. Powell: Correct, your Honor.

The Court: It is the view of the Court that in valuing power plant or power distribution properties, because there is no direct market for such properties, that in arriving at a fair cash market value, other things may be offered and admitted as tending to show market value. One of them is reproduction cost new. Another is reproduction cost

(Testimony of Hugh B. Tinling.)

new less depreciation. For that reason I will let this in, even though it shows no depreciation, with the understanding that either side may show the reproduction cost new less depreciation. This one represents merely the reproduction cost new, as I understand.

Mr. Powell: Correct, your Honor.

The Court: In view of the attitude which the Court has taken in this case, which is well known to both counsel, there should be a segregation of the properties devoted to irrigation, and the power plant proper. That, it seems to me, would be necessary for another reason, and that is that there were different times of taking, and the measure of value must be the value at the time [407] the property was taken by the government. The power plant was acquired April 1, 1943; the irrigation works October 1, 1943.

Mr. Powell: The reverse, your Honor. The irrigation works in April.

The Court: Irrigation in April, and power in October. I see; I had it just turned around. For that reason it seems to me that as to the pumping plant structures here, and that part devoted to irrigation, the testimony is that the value he has placed here as a reproduction cost estimate is as of April 1, 1943, is that right?

Witness: It is not April 1, it is about April 22.

The Court: Well, that's near enough to it, and the rest of the property, there should be some showing that there wasn't a substantial amount of

(Testimony of Hugh B. Tinling.)

change, if that is the fact, between April and October. I also think that in order not to confuse the jury, that at some time during the trial here, either on this exhibit or on a sheet attached to it, there should be shown totals totalling separately the witness's estimate of reproduction cost new of the property devoted to irrigation, that is, the part that is a part of the irrigation works, and then separately the total of the power plant properties. With that understanding the objection will be overruled and the [408] exhibit admitted.

Mr. Ramsey: Exception, please.

The Court: Yes, exception allowed.

(Whereupon, Defendant's Exhibit for Identification No. 9 was admitted in evidence.)

Mr. Powell: I have prepared additional copies. Might I ask if the jury might have copies of them, so they can follow the testimony?

The Court: Yes, that's all right.

Mr. Ramsey: Do I understand that the members of the jury are furnished with copies of this exhibit?

The Court: They are furnished for their use in following the testimony of the witness, as I understand it.

Mr. Ramsey: May I have an exception to that?

The Court: Yes, an exception will be allowed. These copies, I may say, should be turned back to the bailiff at recess time, and will be turned back promptly after the testimony of the witness is con-

(Testimony of Hugh B. Tinling.)

cluded. The copies of the exhibits are not to be kept throughout the trial by the jurors.

Mr. Powell: Correct, your Honor, and for the record I might state that the copies the clerk has to hand to the jury are photostatic copies of the original that has been received in evidence. [409]

The Court: Is there any objection, Mr. Ramsey, on the ground that the copies are not true copies of the original?

Mr. Ramsey: No, your Honor, that's not the basis of the objection at all. If the court desires me to state the basis for my objection, I would be very glad to do so.

The Court: Yes, I think you may state that, surely.

Mr. Ramsey: It is objected to upon the grounds that it is placing into the hands of the jury and giving undue weight to the particular testimony here proposed to be adduced, that is, exhibiting to the jury and placing in the hands of each of the jurors a tabulation of the testimony which counsel proposes to adduce from this witness.

The Court: Well, counsel could read this to the jury, and then they're presumed to remember it. It has been the practice to allow that in this court in these cases, and I will extend the same privilege to both sides, of course, and the government will have its exception.

(Whereupon the Clerk distributed copies of Defendant's Exhibit 9 to the jury and one alternate juror.)

(Testimony of Hugh B. Tinling.)

Direct Examination

(Continued)

Q. Now, Mr. Tinling, referring to page 1 of Exhibit 9, Generating Plant Equipment, Item 1 is what?

A. The first item covers the substation, and the substation [410] is made up of a number of parts to make a complete unit.

Q. Where was the substation in the power plant?

A. The substation is in the lower floor, and on the river side of the power house. In other words, the jury, I believe, was in the basement, and went in and saw the transformers and the equipment that is listed under substation is the equipment that is in that room where the transformers were located.

Q. The substation, then, is the transformer room, is that right?

A. Part of it, that's right.

Q. And are the items as listed under that subdivision the items that you found there in 1943?

A. Yes. The first items there, of three 200 Ampere, 60 K. V. Single Pole, Single Throw Switches, \$325.00, were disconnecting switches. The next item is known as an oil circuit breaker. It is a switch in which the contacts operate in oil, and those were to the left of the bank of three transformers. The next item was a set of choke coils which were originally installed for lightning protection, and I believe were located up high on the wall, and the three transformers were the three big

(Testimony of Hugh B. Tinling.)

units in the steel tanks, that were set in cubicles along the river side of the power house, on the transformer floor.

Mr. Ramsey: May the record show that my objection [411] to Exhibit 9 goes also to the testimony of this witness on all items therein appearing?

The Court: Yes, the record may so show.

Direct Examination

(Continued)

Q. The values as placed on the substation items are what value?

A. Those are new values, based on quotations from the manufacturer of that type of equipment in April, 1943.

Q. In April, 1943? A. That's right.

Q. What was the value of these items on October 1, 1943? A. The same.

Q. The same? A. Yes.

Q. Why do you say they were the same?

A. Well, the prices were unchanged during that period, both as to the value of equipment and as to the wage rates which would have been paid to labor for installation of that equipment.

Q. Does that same thing apply to all of the items where value is shown, Mr. Tinling?

A. Yes, sir.

Q. Now, go on, if you will, please, to the next item.

(Testimony of Hugh B. Tinling.)

A. Now, Item 2 is Generating Unit No. 1. That covers the Allis Chalmers Generator, which was the generator farthest [412] from the door as we entered the power plant. That has a value of \$24,000.00. The water wheel is down below the generator on the water wheel floor. The Allis Chalmers Governor was replaced since the time this inventory was taken, and there is now a General Electric, or rather, a Woodward Governor installed on the generator floor beside the Allis Chalmers Generator, and the rotary pump for operating the governor was also replaced at the same time as the governor.

The third item, Generating Unit No. 2, was the General Electric Generator, which was nearest generator to the door of the power house, valued at \$27,000.00. The Woodward Governor and alarm and pump, the governor was located near the generator, and the oil pump that operated the governor was located to the left of the door as they entered the power house, and the water wheel, of course, was down in the pit below the lower floor.

Q. Now, when the jury was there on Monday which generator was being operated?

A. The General Electric Generator that is known as Generating Unit No. 2.

Q. And that is the one you have just been describing?

A. That is right.

Q. The propeller type wheel is located where?

A. Generating Unit No. 2, nearest the door.

(Testimony of Hugh B. Tinling.)

Q. And that was also being operated?

A. Yes, sir.

Q. All right.

A. The next item, number 4, the exciters, are direct current generators used to supply direct current for exciting the alternating current generators, and the exciters were located between unit No. 1 and No. 2 on the first floor. One of them is a vertical generator which is driven by a water wheel down below the lower floor. The second unit is a motor generator set, and was a generator driven by a motor, and the water wheel driven Allis Chalmers exciter has a governor there which had been there, I guess, since the plant was built. It was not in use. That was run at a fixed speed, and they set the speed and the load and do not use the governor to operate. I believe the District has put that in at a salvage value of \$25.00. The vertical exciter is listed at \$3600.00; governor \$25.00, and the motor generator at \$2100.00.

The next item, number 5, refers to the switch board, which was on the west side of the power plant, as you came in, and between the two generators, and the switch board was made up of a number of panels, and the equipment that is on those panels has been listed, and the price listed above as switch board covers all the [414] switch board, including all the auxiliary equipment, meters, current transformers, and the instruments that are on the switch board.

(Testimony of Hugh B. Tinling.)

Q. Each of these panels has a different, distinct, use, has it?

A. Yes, nominally they use one panel for each generator, or a panel for what they call synchronizing voltage panel. They have another panel for generator number 1 and number 2, easily designated that way, so they can group the meters and control the feeder unit. These panels are grouped so that they have the controls or instruments for each machine or feeder on one panel, so the operator can refer to that one panel and know that refers to one machine or feeder, and do away with confusion. The equipment listed on that switch board, which is included in this \$4260.00 price, continues over to page 3 and the top portion of page 4.

Q. Now, had you had any recent experience with a similar panel plant, Mr. Tinling?

A. Yes, this plant is in a great many respects very similar to this Pend Orielle Mines and Metals plant which was installed in 1938, both as to range and capacity and also the general characteristics of the equipment we installed.

The Court: Well, we'll recess until 1:30. Maybe the lights will be on by that time.

(Whereupon the Court took recess in this cause until 1:30 o'clock p.m.)

Yakima, Washington, February, 12, 1947

1:30 o'clock p.m.

(All parties present as before and the trial was resumed.)

HUGH B. TINLING

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. Mr. Tinling, I believe you had completed the description of the panels. What is the next item that is on page 4?

A. The next item, item number 6, under Station Lighting, which included the electric wiring, fixtures, fuse panels, and lighting the power house, was in the amount of \$560.00.

Q. Pardon?

A. I say that was in the amount of \$560.00.

Q. How much wiring is there in a power plant such as this?

A. You're speaking of wiring for lighting, or for power?

Q. N, the item 6, Station Lighting.

A. Well, that included all the lighting for your main floor, the water wheel floor, substation, and convenience outlets they would use for portable tools for repairs, the [416] light panel, possibly a transformer for stepping the voltage from 2400 to 240, the lighting fixtures that would be necessary

(Testimony of Hugh B. Tinling.)

in there, and the lighting on the outside to give illumination for entering the power plant.

Q. Was the lighting there similar to the station Lighting you installed in this power plant you refer to?

A. Oh, the number of outlets and lights were about equal, however, the lighting installed in that plant is somewhat older, the fixtures would be an older design, than what would be installed in a newer plant. However, so far as giving illumination, it gave the necessary illumination for the workers to go about their work.

Q. Now, the next, Station Wiring?

A. Item 7, which is the Station Power Wiring, includes the actual installation of conduit or steel pipe, which we call conduit, in the electrical industry, and the cables that run from the switch board to the generators and the generator sets and exciters, and the control wiring to the switch board, headgates, and various accessories in the station, and also the wiring which furnishes what we call station power, in other words, motors to operate the headgates and control on your governors, and you have motors on your oil pressure pumps; it is miscellaneous power that is consumed in the station. I believe they also had a small amount of electric heat that they used [417] in the operator's office.

Q. And the amount of that item?

A. The amount of that item was \$6250.00.

(Testimony of Hugh B. Tinling.)

Q. You have an item there of a pump that you haven't valued?

A. No, that pump is the pump that has been referred, I believe, in the previous testimony, as a pump that was used to irrigate the land, I believe, in the vicinity of the power house, and I did not price that in here with the power house equipment; however, I did estimate the value of the motor and the pump and the installation as around \$1700.00.

Q. Now, the next item, power lines?

A. The Power Lines, that includes the labor and the material, conductor, poles, cross arms, insulators, everything necessary to build the power line, which ran from the power house to Coyote Junction down to the Coyote Pumping Station, and that list of structures was made up from a physical count which I made by going over the line, and then taking the structures, each type of structure, and pricing it with the values of materials quoted by the manufacturers in April, 1943, an estimate of the labor in arriving at a unit price, which is on pages 6 and 7, and then taking the quantities of the structures times the unit price gave us the totals which are on the right hand side of this page, and you [418] have, incidently, sixteen miles of power line. There's 580 pole structures, at an average cost of \$70.57 each, gave a price for the lot of \$40,930.60; 160 Anchor structures at \$33.22, at a total cost of \$5315.20; one switch structure at Coyote Junction on which we made a lump sum estimate of \$500.00.

(Testimony of Hugh B. Tinling.)

Q. Just describe what that structure was.

A. That was a switch structure where the line terminated at Coyote Junction, I believe shown on your map there.

Q. That is Exhibit 1, the map on the board there.

A. Yes, Exhibit 1, where the line came in to Coyote Junction, and I believe the Pacific Power and Light Company came in to that point, and also the tap line went to the Coyote Pumping Plant, and they had switching equipment there so they could disconnect the Pacific Power and Light and the Priest Rapids Irrigation District. The conductor on that line is about a 4/0 aluminum. It is a type of conductor that was used at that time, different than is used now. There is approximately 263,000 feet of the conductor and the accessories necessary to string it and put it on the insulators, at a value of \$34,200.00, and then the labor and expense of stringing the wire, which is detailed on page 7, \$4997.00. The total of that section would be about \$85,942.80.

Q. Now, while we're on that, Mr. Tinling, you have been [419] requested to make a division of this as to the amount going down from the power house to Coyote Junction? A. That's right.

Q. And from Coyote Junction down to the Pumping Station? A. That is correct.

Q. Where is most of the difficult construction of the power line?

(Testimony of Hugh B. Tinling.)

A. The most difficult part of the construction is where you approach the last few miles, where you approach the Priest Rapids Power Plant. It is on the left hand side of the road as we were going into the plant, and is up on the hillside there, rather inaccessible, and in solid rock where it is difficult to make the holes, and also difficult to bring the poles in and string the wire.

Q. What about the construction from Coyote Junction down to the pumping station?

A. Well, that was relatively open compared to the rest of the line.

Q. And what would be a fair division of the two, that is, of the values you have, between the power line from the power plant down to Coyote Junction, and from Coyote Junction to the pumping station?

A. That will be—from the Coyote Junction down to the Coyote Pumping Station was approximately one and a half miles, and the cost of that proportion of the line would [420] not exceed ten per cent of the total.

Q. Then you would say one tenth, then, of the total amount?

A. Would be a liberal amount, because that's the less expensive portion to construct.

Q. And you have already started a tabulation of that, have you not?

A. Well, it would be a ten per cent of the total of that section, which would be \$8594.28, if you

(Testimony of Hugh B. Tinling.)

took ten per cent of that portion of the section for that portion of the line.

Q. Would you give us that figure again, please?

A. \$8594.28.

Q. Now, while we're there, for the benefit of these of the jury who don't know about stringing or about the poles, would you mind detailing the work that is necessary in preparing and setting a pole, and assemble it?

A. Well, that data has been detailed on page 6 of the exhibit, under the heading of the Priest Rapids Irrigation District, Work, Pole Structures, and I have prepared a bill of material that would be used in case of replacement of that line, and also shown the items of labor, and the poles used were 40 foot, an average of a class 4 pole. Class 4 determines the weight or diameter of that pole, and we've taken figures from the manufacturer of the pole to determine the value of the pole, which was [421] \$16.65, and one would be required for a structure, and for putting on the top assembly, in other words, your cross arms, your pole top pins, your insulators and pins, listed the billing of the material, and you put on your hardware and insulators, four 2 inch washers, 12 cents, two cross arms, one of which was used to carry the power insulators and the lower one for telephone, a value for the two of \$3.60, the two cross arm braces, they're used only on the power conductor, not on the telephone, a value of 50 cents for the two, four $\frac{5}{8}$ inch machine bolts to bolt

(Testimony of Hugh B. Tinling.)

the cross arms on and bolt the pole top pin which goes up at the ridge of the pole, four of those at a price of 92 cents, two, $\frac{3}{8}$ inch carriage bolts to fasten the cross arm, value 10 cents; one lag screw for the braces, at 6 cents; there's three 60,000 volt porcelain pin insulators, two of them on the cross arm, one on the ridge pin on top of the pole, value of \$18.03; two insulator pins, they were used on the cross arms to support these insulators, value \$3.28, and one steel pole top pin, that went on top of the pole to support the top insulator, value \$1.21; on the lower cross arm, two telephone insulators, value 10 cents, and two telephone insulator pins, value ten cents; for tying the wires to the insulators you have 24 feet of tie wire, estimated at 36 cents, and for tying the telephone wires to the [422] insulators, four feet of tie wire, value 4 cents.

That's your bill of material required on a typical structure used on that line. In your labor you would have certain operations, gaining the pole, that's cutting a slot where your cross arm fits in, so it can't move out, and drilling a hole for the bolt to mount the cross arms on, and then to mount the cross arms, and the bolts and the hardware, a cost of \$4.63; for digging the hole, the estimated cost of \$12.05 average on that line, and raising and setting and aligning the pole, estimated at \$7.00; and for back filling the hole, and tamping in, and hauling the pole to location, is estimated at \$1.82, making a grand total for your pole structure of \$70.57; on the next page—

(Testimony of Hugh B. Tinling.)

Q. Now, before we leave the pole structure, Mr. Tinling, what experience have you had with the matter of selecting grading, and purchasing of these poles?

A. Well, I've had—I am also in the business of manufacturing poles. I own a part interest in a pole yard, and I am a member of the American Wood Preservers' Association, and have had occasion to observe the life and weathering and depreciation of poles over a period of years I've been in the construction business.

Q. And now, about digging the holes for these poles, how deep are those holes dug? [423]

A. Normally on a 40 foot pole they will dig those about six feet deep. It will vary. If it is in a rock, why, it may take a foot less.

Q. All right; you have raising, aligning, and setting the pole, \$7.00?

A. Yes, that is the work that it will take a crew of men to raise that pole up off the ground, and with a 40 foot class 4 pole you will probably have around an eight or nine men crew, possibly more in the rough country. Of course, in level country, they do part of that work with a truck and winch and A-frame derrick, but on part of it, you would have to have more men in order to get those poles up into location in rough terrain, so they take, say, an eight-man crew there to raise that pole off the ground, get the butt in the hole, and straighten it up, then hold it while you back fill and tamp that hole full of dirt and align that pole so it is in line with the rest of the poles in the power line.

(Testimony of Hugh B. Tinling.)

Q. Now, yet's go on to the next item.

A. On page 7 the first item is the labor and expense of stringing the wire. I have outlined the estimated dollars required for that operation, which includes hauling the reels to the scene of location; the wire in that size of conductor comes on large wooden reels, and that has to be hauled to the location and raised up with reel jacks on an [424] axle so the wire can be pulled off, or if the ground is level enough they would hook the reel on a truck, or I suppose in the early days on a wagon, and drive along and string that wire on the ground, and it is estimated for the 263,000 feet of wire involved in that line you would have the operation of hauling the reels to that location, stringing your conductor, and the next operation would be hanging what we call a stringing dolly on the cross arm, actually, what that is, it is called a snatch block, a block with a pulley in it, like a block and tackle, except on one side it has a hook so you can open it and drop the conductor in. Those are hung on each cross arm, the wire is put in those dollies, or pulleys, and the next operation would be pulling the conductor to a tension and dead ending that conductor. That conductor has to be pulled to a certain tension, certain amount of clearance, to gain clearance, and it has to be on the pulleys so you won't have friction on the cross arm, otherwise you might have different tension on another spot of the line; so that the wire would be reeled back and forth through the pulleys and then equalize and dead

(Testimony of Hugh B. Tinling.)

end the wire, and the next operation would be to take that wire out of the dollies and put it on the insulators and tie it to the insulators, and remove the dollies and terminate the work on the stringing. The estimated labor [425] cost for that operation, for that line of 263,000 feet of wire, was \$4997.00, as shown here on the right hand side.

Q. Now, the next item?

A. The next item is your Anchor Assemblies. Wherever your pole is out of line or where your line makes a turn of a corner, or where you dead end, of course, that pole has to be anchored to hold it upright against the pull, the tension of the conductor, and for that anchoring we have made up a typical bill of material, which includes a 12 inch by 5 foot creosoted anchor log, which is just a five foot log which has been treated with creosote, which is a preservative, and it has a hole drilled through it so the anchor rod can be placed through it, and the washer and the rod, four by four inch washer, and five-eighths inch by seven foot galvanized anchor rod, which has a thimble eye in the top, and a galvanized thimble, which is simply a protector to go through this eye to protect the guy wire that goes around the rod, and to make up this guy to the pole would require approximately fifty-five feet of guy wire, to go around the pole and come down at a forty five degree angle, or more, as may be necessary, depending on the terrain of the ground, and to terminate the guy wire and guy around the pole and tie it they use

(Testimony of Hugh B. Tinling.)

what they call a three bolt guy clamp. One of these is used at the top of the pole, after the guy wire is wrapped around the pole, two more on the guy insulator which is in the middle of the wire, between the pole and the ground, and the other one is used at the bottom of the guy, where it attaches to the rod.

At the top of the pole there is an item of two, they show 4 inches by 8 feet, that should be four inches by eight inches, strain plates, galvanized; simply pieces of metal that go around the pole to protect the wood of the pole from being scarified or broken by this wire becoming too tight.

The next item is 4 "J" Hooks to fasten in there with lag screws, to keep the wire from sliding down off the pole, off these protective plates. 4 lag screws are used with the "J" hooks, and an item of 8 galvanized nails which you usually use to nail the steel plates, and one insulator, used in the guy wire to insulate it from the top of the pole, and one guy guard, which is installed there so somebody doesn't walk into or drive into that cable on the guy wire.

On the labor, you have your first item of digging the hole, which is an operation again similar to the pole hole, and is estimated at \$12.52 as an average cost of digging the hole; assemble the anchor, estimated at 75 cents; putting that anchor in the hole, back filling and tamping, \$4.24; making up the guy, that is, wrapping [427] it around the pole and fastening on these three bolt clamps,

(Testimony of Hugh B. Tinling.)

fastening on the insulator, and fastening it to the guy wire, we estimated \$4.50; installing the guy guard, 54 cents, or a total of \$33.22 for the complete anchor structure.

Those items are the basic items making up your power line, and those are summarized under your item 8 on page 4.

Q. The items you have just detailed refer, then, to the items referred to on your Power Line item?

A. That's right, yes.

Q. Now, what is your item 9, Mr. Tinling?

A. Your Item 9 are your storage batteries, which were in the Priest Rapids power plant at the time of the inspection and were used for an alarm system there. In other words, if something went wrong it was part of the alarm system, in case a switch would kick out, or in case of trouble of any kind in there they had these storage batteries and the charging facilities for keeping those batteries charged, which is an item of \$270.00.

Q. The next item?

A. The next item is item 10, under Miscellaneous, and item A is your head gate control. You have a motor there that drives the head gate mechanism for raising and lowering the gates that admit the water to the power plant, an item [428] of \$175.00 for that motor. Item B, the power house crane, an estimated cost of \$3600.00.

Q. Where is that crane located?

(Testimony of Hugh B. Tinling.)

A. That is located above the—overhead in the main room of the power house. It is used for installation or repairs, assembly or dis-assembly of the generators and water wheels.

Q. And your next item?

A. The next item is the spare parts that were available, and there were six spare stator coils for the old generator, \$60.00; there is one 15 horsepower 110 volt direct current vertical motor, which was in bad order, which we valued at \$750.00; one set of spare coils for the main power transformer, valued at \$1700.00.

Q. And your next item?

A. Item 12 is under the heading of operators' houses distribution system and wiring, and that item includes the overhead power line that runs from the power plant to furnish light and heat to the operators' houses, and it included three 10 K. V. A. transformers and the service drops and the wiring from the pole to the operators' houses, a total of \$940.00 for the three houses; and then the next figure, total cost of generating equipment, transmission line and pumping equipment; that pumping equipment shouldn't be in there, because we didn't price that one item of pumping [429] there; you're evaluating power property, and that \$1700.00 item that I mentioned earlier, on page 4, is not included in that total; but the total cost of generating equipment and the hydraulic equipment is \$250,557.80, and we've estimated engineering and legal and interest of \$20,044.62, or the total of \$270,602.42.

(Testimony of Hugh B. Tinling.)

Q. That now includes this item of ten per cent of the transmission line?

A. That's right. If you're going to assign ten per cent of the transmission line to the pumping facilities, why, then, you would reduce that figure by \$8594.28.

Q. Now, this pumping equipment that you refer to, is that the pump that is in the power house?

A. That's right. There were some other pumps in the power house that were used for drainage and things like that, that were really part of the power equipment, circulating water through the power house, used for cooling the generators, and bearings, and things like that; those are included in here, but this one pump that was used for pumping water to the farm is in this item of \$8,594.28.

Q. Now, in the next section, Mr. Tinling, you refer to what?

A. Your next section is the electrical equipment and the hydraulic equipment for your Coyote Pumping Plant, and the first item there under item 1, page 8, is your substation, and included there you have a 200 Ampere 3 pole [430] 60,000 volt gang operated air break, \$325.00; three sets of 60 K. V. choke coils, \$300.00; you have three General Electric 600 K. W. transformers, \$10,500.00; and two 4 Pole structures at \$850.00. That is the substation equipment proper.

Q. Now, where was that, where is that substation located from the pumping plant?

(Testimony of Hugh B. Tinling.)

A. That was just a little up the river and across the road from the pumping plant, when we were down there looking at it on the inspection trip, the jury.

Q. Where is the 4 pole structure?

A. Part of that structure is right in front and around the building that those three transformers were housed in, and the other 4 pole structure was up on top of the hill, about, oh, I would judge a hundred yards up the hill from the pump house and substation building.

Q. The next item?

A. The next item is the inventory of equipment in the pumping plant proper, and the items in there included, the first was two Allis Chalmers 450 horsepower 174 R.P.M. three phase vertical motors. These were the motors that were each at the extreme end of the pumping plant, the pump house there. There is one just to the left of the door as we came in, one beyond it, and another one at the extreme right end. I believe they were both covered up [431] with canvas when we were in there. Those at the time of the inspection had platforms and stair rails on them, were assembled.

Q. That was when you examined them in April 1943?

A. That's right. I was noticing when I was down there Monday that part of those had been dis-assembled, the stairway and platform had been removed, and were set off to one side there.

(Testimony of Hugh B. Tinling.)

Q. By the way, Mr. Tinling, was the transmission line still there from Coyote Junction to the pumping plant when you were down there?

A. That was there in April, 1943. It was not when we were down there Monday.

Q. What about the transmission line from Midway substation?

A. Well, that line of course has had changes and additions made to it since it was inspected in April, 1943, quite a number of changes, and I guess certain portions of it have probably been taken out and replaced. At least, some of the structures appeared to be new.

Q. What about the wire itself on the line east of Midway substation?

A. It appears to be the same wire that was there before, as near as I could tell. Of course, I didn't make a detailed inspection. It seems to be the same conductor that was there previously. [432]

Q. On which side of Midway substation was the transmission line the same on Monday, or on both sides of the Midway substation, as you recall?

A. I don't know as I recall the other side particularly. I did not check it. I did not notice your conductor from Midway down the river.

Q. You say you did not?

A. No, I say I did not notice that. As a matter of fact, a good share of the time you're too far away to be able to tell from that distance whether it was the same wire or even the same size, or near the same size.

(Testimony of Hugh B. Tinling.)

Q. Now, going back to Exhibit 9.

A. Continuing here with this first item, this price of \$20,000.00 includes the two motors. The next item is the General Electric 675 horsepower 300/265 R.P.M. three phase slip ring motor. That was the machine just to the left as we entered the Coyote Pumping Plant station. That also was covered with canvas in an attempt to keep some of the dirt out. That motor was priced at \$11,000 installed. The next item is two 35,000 gallons per minute pumps, and those were the two pumps down in the basement, on the lower floor, underneath the two Allis Chalmers motors, and those were estimated at \$2500.00 each, or \$5000.00 for the two. The 28,000 gallon per minute pump, the next item, is the pump that was driven by this General [433] Electric 675 horsepower motor, and it was in the basement below that motor, directly connected with it. The next item is the reciprocating pump, on which there is a price of \$750.00. I didn't notice that pump there; I don't know whether it's been removed or not since the time the inventory was taken. The next item was a 5 horsepower 900 R.P.M. vertical motor driven pump, valued at \$175.00. The next is two Allis Chalmers 5 horsepower motor driven centrifugal pumps, valued at \$350.00 for the two pumps, and incidentally, I believe most of these pumps have been removed since this inventory was made.

Q. That is the smaller pumps, you mean?

(Testimony of Hugh B. Tinling.)

A. Yes. Then there is one item here of a Westinghouse 50 horsepower motor driven centrifugal pump, valued at \$2560.00, and I didn't see that pump there either on Monday; and there were two items of one-third and one-sixth horsepower centrifugal pumps of the value estimated at \$100.00.

Your next item, 3, on page 9, is the switch board panel that was installed in the Coyote Pumping Plant, and that has been broken up into the various panels 1, 2, 3, 4, 5, 6, and 7, and the list of equipment on each panel is listed there, and those panels have been priced on the basis of the instruments and transformers and equipment involved on each one of those panels, the lump [434] sum for the entire switch board, \$3800.00. Incidentally, those panels also include the starting equipment for these three pump motors and also for the other motors which were in that pumping station.

Q. What starting equipment is that?

A. Well, there is on the two large pumps, the Allis Chalmers, they have what they call the auto-transformer, providing reduced voltage for starting those pumps, and on the General Electric motor they had a drum controller and what we call grids or resistors.

Q. A what?

A. A drum controller which was used to start the General Electric motor and also to vary the speed of it to get different outputs from that pump. The next item, number 4, Miscellaneous, is the telephone system that ran from the pump house to the

(Testimony of Hugh B. Tinling.)

operators' house, and the wire and the telephones, estimated at \$75.00, and there's a ten ton crane in there which was used for installation and also for removal of parts or for repairs of the pumps or motors, on which we have a price of \$3200.00; and there's a spare set of coils at that location for the transformers, which was estimated at \$1700.00; and 6 is wiring for the pumping plant. That included the setting of the switch board and running the conduits and the wires and connecting up the motors and the lights and the starters and everything required to make a complete operating unit of that pumping station, estimated at \$2800.00; and item 7, the operators' houses wiring and distribution system, which involved a short 2300 volt line and two 5 K.V.A. transformers and the service drops, was estimated at \$350.00. Item 8, miscellaneous plant piping and valves, in other words under the item domestic water there to supply water to the operators' residences and for use around the pumping plant, and the piping required for that was estimated at \$1400.00, making a total for the pumping plant of \$68,735.00, with estimated engineering and legal expense and necessary expense of 8 per cent, or \$5498.80, making a total for the pumping facilities at the pumping plant of \$74,233.80.

Q. To that, Mr. Tinling, there should be added, should there not, to segregate the two, the 10 per cent you have taken from the other transmission line?

(Testimony of Hugh B. Tinling.)

A. That's right, to that \$74,233.80 you would want to add this 8594.28.

Q. Would you mind making you calculation, Mr. Tinling, by deducting your ten per cent from the total of two hundred seventy thousand dollars that you mentioned as the total of the generating equipment?

The Court: I might say for the information of the [436] jury in keeping their notes here that the original of this exhibit and all other exhibits that are admitted in evidence in the case here throughout the trial will go to the jury room with you. You will have the originals of all the exhibits available when you start to deliberate upon your verdict.

The Witness: Taking that portion of the line that would be charged to the pumping plant, subtracting that from your total for the Priest Rapids Power Plant, would give you a revised total for the Priest Rapids Power plant of \$262,008.14, and it would increase the total value of the Coyote Pumping Plant to a total of \$82,828.08; that's omitting your 8 per cent legal fees and so forth on both your addition and subtraction.

Q. Now, that is a matter of simple computation. You've taken 10 per cent of the pole line cost from the generating equipment and put is on the pumping equipment, is that correct?

A. That is correct.

Q. Now, there was one item I believe you said that you had not valued in the listing, and that is on page 4?

A. That is correct.

(Testimony of Hugh B. Tinling.)

Q. Did you give us an estimated value on that item?

A. Yes, I estimated that at \$1700.00.

Q. Could you add that to your total, then, of the generating [437] equipment?

A. Yes, sir. Are you going to add that to the generating, or to the pumping?

Q. Well, it is in the power house?

A. It is in the power house.

Q. I think it probably should be added to the generating equipment if it is located there in the power house, Mr. Tinling, not used in connection with irrigation district property.

A. With that \$1700.00 added it would make a total for your power house of \$263,708.14.

Q. Now, for the record, Mr. Tinling, you have not read all of the values in the first part of the exhibit, that is, the generating plant equipment, into the record, have you? A. No.

Q. You have omitted some of the items?

A. That's right.

Mr. Powell: I don't see any necessity for putting them in, your Honor.

The Court: No, indeed. We can all read. If he says that's what they are, it is shown in the exhibit.

Mr. Powell: I want to call Mr. Tinling a little later, after he's had an opportunity to check the tabulation which he made, and that's all for now. I may call him later for that. [438]

The Court: You may cross-examine.

(Testimony of Hugh B. Tinling.)

Cross-Examination

By Mr. Ramsey:

Q. Mr. Tinling, the values that you have placed upon the generating plant equipment and the pumping plant equipment and the transmission lines are the replacement value of those items listed as of 1943 plus the estimated cost of installation, is that correct? A. That's right.

Q. Your testimony as to these costs do not reflect any deduction by reason of obsolescence or by reason of depreciation? A. No, they do not.

Q. If you were valuing that plant, that is, the power plant, the pumping plant, the transmission lines, for the purpose of purchase or sale, would you value on this basis, or would you value on the basis of replacement cost less depreciation and obsolescence?

A. That would depend, Mr. Ramsey, on whether you're buying it as a going concern, or whether you're selling it out on the curb, and saying "How much can I get for the machinery and equipment and so forth as is, and as junk." However, if it is a going concern the equipment in there is producing the same amount of power as it was forty years ago; in fact, more.

Q. Your idea, then, is a generator that was installed forty [439] or fifty years ago and is still working is worth just as much as it was the day it was put in there?

A. So far as producing revenue, yes.

(Testimony of Hugh B. Tinling.)

Q. What would you say about the possibility of necessity of replacement of that generator?

A. I don't know of any reason why they would want to replace it. It is operating; it is producing around 1200 kilowatts of power.

Q. Do I understand, Mr. Tinling, that once you install one of those generators, you may expect it to run in perpetuity without being replaced or repaired?

A. That is correct. You have repair on any piece of equipment or machinery, but it is maintenance and repair, and it is not being depreciated.

Q. But it never wears out, is that correct?

A. No reason why it should, if it is kept in repair.

Q. That's true of the pumping plant also?

A. Yes; if the bearing wears out, and is rebabbitted, that bearing is in just as good condition to operate as it was new.

Q. Is there any reason, then, why the value of a piece of machinery a hundred years old shouldn't be as great as when it was new?

A. If it will do the same work now.

Q. The question is, is there any reason why there should be [440] any depreciation of the value of machinery?

A. Again getting into the question of whether you're using it as a going concern, or scrap metal.

Q. It is a question here of the value you would place on this sort of thing for the purpose of sale or purchase.

(Testimony of Hugh B. Tinling.)

A. In this particular instance I would say that the machine would be just as valuable to me as a new machine.

Q. It isn't a question of value to you, Mr. Tinling; it is a question of market value of the machinery.

A. You're talking of market value of the machinery, or of the power plant?

Q. Market value of the entire unit.

A. I would say it is worth as much now as it was worth forty years ago, from that standpoint.

Q. Very well, let's go back on the matter of the electrical units of machinery, and what have you, that was produced forty or fifty years ago. To your mind are those units just as good as the one that is produced now?

A. What do you mean by "just as good"? Produce as much current, or more current? In other words, this machine produces just as much current, rated 1200 kilowatts, produces 1200 kilowatts; if you bought a new machine you wouldn't get any more, any less, any better.

Q. You don't recognize obsolescence, then, in electrical equipment? [441]

A. No, not in the sense you would in an automobile, where it is a matter of personal convenience. If you're producing power, it is the same; you can't distinguish between that power and that from the generator installed in 1941.

Q. Far as that's concerned, referring to an automobile, if it had a 40 horsepower motor, and was

(Testimony of Hugh B. Tinling.)

produced forty years ago, and you were comparing it with the 40 horsepower motor produced at the present time, they both generate 40 horsepower?

A. That's right.

Q. Is the motor 40 years ago of the same value as that today?

A. Depends on what you're using the motor for.

Q. I am assuming if it was a motor for the propulsion of a motor car, it was for that purpose.

A. I think that is different from an electrical plant.

Q. In what way?

A. One for the purpose of producing electricity, and one for the convenience of the man who owns it.

Q. Do you recognize that an old power plant might be more obsolescent than one installed recently, with new equipment throughout?

A. No, I can't say that you're going to gain a thing. In this plant you actually replaced one of those generators three years ago, and that new generator doesn't produce [442] any better or more kilowatt hours than the old one forty years old.

Q. No, and your automobile engine that was produced forty years ago, that would produce forty horsepower, doesn't produce less power than a forty horsepower motor produced for the same purpose today?

A. That is quite true, but I don't see the analogy between the electric plant and the automobile.

Q. Mr. Tinling, you have appraised hydro-electric plants heretofore, haven't you?

A. Yes, sir.

(Testimony of Hugh B. Tinling.)

Q. Have you appraised those in each instance on the basis of replacement cost without any deductions for obsolescence or for the wear and tear on them?

A. Your wear and tear, Mr. Ramsey, can be covered by insurance from any number of reputable concerns.

Q. You're not selling the insurance, Mr. Tinling, and I wish you would answer the question as it was given to you, direct.

A. Will you repeat the question?

(Whereupon the reporter read the last previous question.)

A. We have appraised on the basis of replacement cost, and we have not, I am speaking of the firm, have not made any allowance for depreciation and obsolescence. We left [443] that up to the owner of the plant to determine that.

Q. Did you appraise those for the purpose of determining what the sale or purchase value of that unit would be?

A. No, we have appraised the replacement value only, Mr. Ramsey. In other words, we have not carried the appraisal through to the point where the owner is presenting his figures to determine what he's asking as the value of the plant.

Q. Well, now, Mr. Tinling, as a matter of fact, and as an electrical engineer, you do recognize the fact that in placing value upon generating equipment or plants or pumping plants, that in fixing the value, the fair value, of those things, that it is uni-

(Testimony of Hugh B. Tinling.)

formly recognized that the depreciation and the obsolescence are items which operate to depreciate the original or replacement cost value of those things, don't you?

A. Those values are set at various amounts, of course, by various authorities, and depending on the use and application of them.

Q. Suppose that plant out there, instead of being forty years old, was a hundred years old, would you still say that the value of that property was what it would cost to replace it?

A. Yes, if it was producing the same amount of power as it would produce if you put in the new equipment to replace [444] it, yes, it is worth that much to the owner.

Q. So you refuse to consider at all the factor of obsolescence?—

A. No, I didn't say that.

Q. —Of the equipment and machinery, and depreciation?—

A. No.

Q. —In the machinery and equipment?

A. No, I simply would say on the amounts—

Q. Well, you've allowed no amount, have you?

A. That's right; I claim there is none on those machines.

Q. And there is one of those generators down there that is at least forty years old?

A. No, it is not quite forty; between thirty-five and forty.

Q. And to your mind that generator is worth as much as if it was a brand new one today?

(Testimony of Hugh B. Tinling.)

A. It is worth that much to the owner.

Q. It isn't a question of the owner. We're dealing with the sales value of it; someone is attempting to sell that now, what that is worth for the purpose of sale.

A. That individual generator, or the hydro-electric plant as a whole?

Q. The whole thing.

A. Then it is worth just as much as it ever was.

Mr. Ramsey: I think that's all.

Mr. Powell: May I call Mr. Tinling later on the tabulation?

The Court: Yes, if you have something else, you can call him later.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Ramsey: If the Court please, before Mr. Hall's testimony begins I wish to move to strike all of the testimony of the witness Mr. Tinling upon the ground and for the reason that the testimony is not predicated upon replacement value less depreciation and obsolescence, but entirely on replacement cost value without any consideration whatever being given to obsolescence or depreciation.

The Court: The motion will be denied. Exception allowed. You were through with the testimony in reference to this Exhibit 9, were you, Mr. Powell?

Mr. Powell: Yes, your Honor.

The Court: Will you pass those copies to the bailiff, please, and return them to Mr. Powell? He may have use for them again.

GERALD D. HALL

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Mr. Powell: We have a publication, your Honor, from the United States Geological Survey showing the gauge readings at Trinidad, which we would like to offer in [446] evidence as defendant's Exhibit 10. It consists of seven sheets from 1940 to a part of 1946 inclusive, just showing the readings at the Trinidad Station.

(Whereupon, compilation of gauge readings at Trinidad Station was marked Defendant's Exhibit No. 10 for identification.)

The Court: Can you stipulate or show how far Trinidad is from your power plant?

Mr. Powell: Yes, your Honor, Mr. Hall I believe can give us that.

The Court: Is there any objection to this exhibit?

Mr. Ramsey: I assume this is going to be identified by your witness now on the stand?

Mr. Powell: Yes.

The Court: It hasn't been identified; perhaps you had better identify it and offer it in the regular way.

Mr. Ramsey: I don't think there will be any objection.

The Court: I think, though, for the record it should be identified and show how far it is from the pumping plant, or the power plant, of the defendant, so the one who reads this record will know.

(Testimony of Gerald D. Hall.)

Direct Examination

By Mr. Powell:

Q. Your name is G. D. Hall? A. Yes, sir.

Q. Where do you live, Mr. Hall?

A. Yakima.

Q. How long have you lived in Yakima?

A. Twenty-five years.

Q. And what do you do?

A. I do private engineering work.

Q. Where is your office?

A. Larson Building.

Q. And are you a member of the Society of Civil Engineers? A. Yes, sir.

Q. Licensed in the State of Washington?

A. Yes, sir.

Q. In any other states?

A. Oregon and Idaho.

Q. Oregon and Idaho? A. Right.

Q. How long have you been engaged in engineering work? A. About thirty years.

Q. Did you at any time work for any agencies that did engineering work? Were you employed by the Reclamation Bureau at one time?

A. That's right; approximately five years.

Q. When was that?

A. '14 to '18; 1914 to '18.

Q. And what work did you do after that? [448]

A. Highway work and irrigation work for other irrigation systems.

(Testimony of Gerald D. Hall.)

Q. Have you been employed by or have you done consulting work in connection with excavation and structures, computing quantities and values?

A. I have, yes.

Q. Just detail, if you will, some of those employments, Mr. Hall?

A. The tunnels and replacement of part of the main canal on the Naches-Selah Irrigation System; an extension to the Sunnyside project; improvement of the main canal, Union Gap Irrigation District; the pumping plants and distribution systems of the Outlook Irrigation District, Snites Mountain, and the Grandview Irrigation District; done some other work in the Spokane area; not as much there as in this area.

Q. And were you employed by the Priest Rapids Irrigation District?

A. Yes, beginning in 1938.

Q. In 1938? A. Yes.

Q. What work did you do at that time for the Priest Rapids Irrigation District?

A. At that time an application was prepared to be submitted to the Public Works Administration for a loan and grant [449] to complete the distribution system and increase the pumping capacity for irrigation, and increase generation to provide power for pumping water for sale.

Q. Where did you start your work at that time?

A. Our first investigation was the power plant and the power canal.

(Testimony of Gerald D. Hall.)

Q. And what kind of work did you do?

A. The first step was to determine the volume of water that would be needed at minimum flow in the river to obtain maximum generation. We ran tests on the generators, measured the quantity of water they were using, then surveyed the power canal to see how much enlargement would be necessary to bring that water down at low water in the Columbia.

Q. And you say you surveyed the canal. How did you survey the canal?

A. Cross sections and profiles.

Q. Now, what part of the canal did you survey?

A. All of it.

Q. Did that include the bottom of the canal?

A. Yes.

Q. Did it have water in it? A. Yes.

Q. And you surveyed it while the plant was in operation? A. Right. [450]

Q. What did you find the condition of the canal to be, Mr. Hall?

A. No improvement was needed in the first three thousand feet above the power plant. Our survey started at the power plant. At about 3500 feet above the power plant there was an obstruction in the canal, where a rock projection was not removed, caused considerable head loss. From that section up some improvement was necessary to the spillway.

Q. How far is the spillway above the power house?

(Testimony of Gerald D. Hall.)

A. It is 5400 feet above that, at the center. From there on up the old natural channel had been partly improved, but the bulk of improvements were to be from this spillway at 5400 feet up to the river, at the head of the rapids, which was 10,400 feet above the power house, leaving 5000 feet of the canal to have the major part of the improvements.

Q. That is the upper half of the canal?

A. Yes.

Q. Had the major improvements, is that right?

A. The greater percentage of the work to be done had to be done in that section.

Q. Is there a direct relationship between the water in the river as the canal is now constructed and the amount of power developed there? [451]

A. Yes.

Q. Now, where is Trinidad?

A. I can't give you the exact distance; it is about fifty miles up river from the power house. It is by highway twenty miles south of Wenatchee, and the highway roughly parallels the river.

Q. Is there a gauging station there?

A. Yes, there is.

Q. Who operates that gauging station?

A. United States Geological Survey.

Q. And are there readings, if you know, made there?

A. There's not only readings, but there is a continuous record made of the stage in the river by a recorder. The record is on a chart.

(Testimony of Gerald D. Hall.)

Q. And what is the condition as to whether there is any inflow below that?

A. Practically none, excepting during flash floods.

Q. What other streams run into the river below Trinidad and above Priest Rapids?

A. The only well defined is Crab Creek. That comes in from the east, and there is seldom any flow.

Q. Now, Mr. Hall, I hand you defendant's identification 10, and will ask you if you know what it is?

A. This is a summary of the data taken by the United States Geological Survey showing the gauge heights and discharge in second feet at Trinidad for the year 1940 and from there to part of '46.

Mr. Powell: We offer identification 10, your Honor.

Mr. Ramsey: No objection.

The Court: It will be admitted.

(Whereupon, Defendant's Exhibit No. 10 for identification was admitted in evidence.)

The Court: The court will take a recess now for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

GERALD D. HALL

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. How long did you take, or did you say, in surveying the power canal, Mr. Hall?

A. The actual field survey took the party about a week. The observations of the gauges to check the water surface elevations were carried over two years of low water periods.

Q. Two years of low water periods?

A. Uh huh.

Q. How much of your time did you spend there during the time [453] the survey party was there?

A. I can't recall; probably half the time.

Q. And how many times were you there during the low water periods to make these observations?

A. I was there on an average of every ten days or two weeks, but the records were kept and the observations made in the meantime by Mr. Grell, who was then chief operator.

Q. And as a result of those studies was any canal work done on the power canal? A. Yes.

Q. What work was done?

A. Some obstructions were removed in the neighborhood of the spillway and slightly above there, but the canal was completed in accordance with the final plan we adopted down 2000 feet from the in-

(Testimony of Gerald D. Hall.)

take, or below the intake at the head of the rapids.

Q. And when was that work done?

A. 1940, I think; I'd have to refer to the contract. It was done in the fall of '40 and completed in the spring of '41.

Q. What did that work consist of?

A. Opening an additional channel from the river into the improved channel, and enlarging the old entrance from the river in the junction of those two channels, which formed a "Y". The canal was widened to the planned width I think 600 feet or 500 feet below that point, so we [454] could have full completion that far down from the river. One of the reasons for that was that earth for dams across the canal was too far away at the head of the rapids. We wanted to get down where it was readily available for continuing the improvements. You could then put in a small earth dam for \$100.00 or \$125.00.

Q. What was the earth dam for in the canal?

A. That was to close the river off and work in the canal.

Q. And do work in it with no water in it?

A. That's right.

Q. When you mentioned obstructions, what kind of obstructions were they?

A. There were some rock points and small reefs in the bottom of the canal that had to be removed to have a canal section that would conform to the size we wished.

(Testimony of Gerald D. Hall.)

Q. The jury was out there Monday afternoon, Mr. Hall, and went up to the intake of the power canal. Where is this new channel that you say was cut through?

A. The junction is about 1900 feet down from the end of the old canal. From there the channel projects northeasterly to the river,

Q. Is there a crib dam there?

A. Yes, just below the new side channel.

Q. Below the what?

A. Below the new entrance, across a narrow side channel of [455] the rapids.

Q. And about how long is that dam?

A. I've forgotten the length of it, but as I recollect it was about 300 feet.

Q. Did you inspect it while you were there?

A. Yes.

Q. What was the condition of it?

A. It was in good condition excepting the east end had been washed out.

Q. Which end would that be as to the——

A. That would be away from the power canal.

Q. Is it at right angles to the stream?

A. Yes, very close to it.

Q. And what was the purpose of the dam?

A. It was to raise the water level in this side channel of the rapids to provide more head for the power canal.

Q. Approximately how high is it?

A. The deepest point, it is about twelve feet.

Q. That is the dam?

(Testimony of Gerald D. Hall.)

A. Yes; you see, that is a relatively shallow side channel.

Q. And was enough of the dam exposed so you could actually see the——

A. Oh, yes, you could walk across it.

Q. Are there timbers there? A. Yes. [456]

Q. And how was it constructed?

A. Timber cribbing, timber set on each other and then cross timbers in between, dowel pins down through the timbers to hold them together, and then filled with rock. We worked a tractor across the top of it to repair the east end.

Q. And does it show the effects of wear and damage, except the east end?

A. No, it was in very good condition.

Q. How wide was this new channel that was cut through from the river to the canal?

A. 100 feet on the bottom.

Q. And what result was obtained by cutting this new channel?

A. I've forgotten the exact increase in generation. It improved the generation, and it would not be fully effective and will not be until the enlargement of the channel is continued down to a point about 3100 feet above the power house.

Q. And was that work all included in that plan? I mean, was the improvement you're discussing now all included in the studies that you made?

A. Yes.

Q. Why do the obstructions down that far in the canal affect the flow of water in the canal?

(Testimony of Gerald D. Hall.)

A. The channel is narrower and shallower than it should be, [457] and there isn't enough fall unless that canal is opened up for the full capacity of the completed part above to go through.

Q. For the full what?

A. For the full capacity of the completed part above to go through the lower channel.

Q. You get more water above than can be taken by the lower channel?

A. You can; if the obstructions are removed the capacity will be as planned.

Q. Did you make a study of the amount of water that could be obtained by this enlargement, at low water stages?

A. Yes; we had in addition to the gauges in the canal a gauge in the river at the rapids, other gauges at the power house and below the power house, so we read all gauges simultaneous and correlated the gauge heights and river flow at Trinidad with the elevations we had at the canal. From that we established the depth of the canal and the other requirements in point.

Q. You say you correlated the information?

A. Yes.

Q. What did that show?

A. It shows that when the river flow was between thirty and thirty-five thousand second feet at Trinidad, a five thousand second foot increase will raise the water one [458] foot at Trinidad and four-tenths of a foot at Priest Rapids, at the head of the rapids.

(Testimony of Gerald D. Hall.)

Q. And what effect would that have on the power canal?

A. Well, the effect would be to establish your elevation so that you could obtain the required flow at low water in the river, required flow in the power canal.

Q. The effect would be what?

A. Establish the elevations you would have to use to obtain the required flow in the power canal at low flow in the Columbia.

Q. Now, just what is the effect on the power plant of the change in elevation of the river?

A. Well, that depends on the stage, under the present conditions.

Q. Well, may I state it this way. What is the difference in power production at the power plant between the time the river is at high stage and the time it is at low stage?

A. I don't have those records with me. You see, we have a partially completed condition, and we have taken records on that, but I don't have the detail of that with me.

Q. Well, there is a difference in the head obtained at the power house, isn't there?

A. Oh, yes; we have maximum head at low water in the Columbia.

Q. What is head?

A. The maximum head is, I think the extreme observed there [459] is 27 feet. That would be the difference in elevation between the water surface in

(Testimony of Gerald D. Hall.)

the power canal and the water surface immediately below the power house, where the turbines discharge.

Q. That is the definition of the term "head"; the difference in elevation between the two?

A. Through that power house, yes.

Q. What quantity of water is necessary to operate both generators at capacity?

A. If number 1 were not replaced, we had planned to replace number 1 because of the need for added power of the district, added power to improve sales, you need 1860 second feet at 25 feet head. We had planned more capacity than that for other reasons.

Q. And what were those other reasons?

A. One reason was to maintain a continuous waste at the spillway to sluice out sand that travels along the bottom of the river under certain conditions. The other was to provide the same sluiceway condition to a less degree at the power house; one continuous waste to sluice out the sand, the other as a sluiceway to waste grit into the river, or ice.

Q. What capacity did you then figure on getting in the canal?

A. We planned on 2200 second feet at the power house, 2700 feet down to the spillway. [460]

Q. Now, Mr. Hall, from your studies, is it possible to get that amount of water in the canal at the powerhouse at low water? A. Yes.

(Testimony of Gerald D. Hall.)

Q. And how would that be done?

A. We knew definitely the elevations with respect to the flow at the entrance to the canal. The only question from that point on would be whether the water in the Columbia would ever drop below 24,000, I think it is, second feet.

Q. Speak a little louder.

A. The only hazard, you might call it, would be whether the flow in the Columbia would drop below 24,000, say 300 second feet. Our belief that it would not drop is the agreement between Puget Sound Power and Light and the Bureau of Reclamation. The Reclamation guaranteed to them that their operation of Grand Coulee Dam would not be such as to make their flow less than the previous minimum flow of the Columbia.

Q. And what was that?

A. 24,000 plus. I don't recall the exact figure; slightly over 24,000 second feet.

Q. The Puget Sound is located where?

A. The power plant is about twelve miles south of Wenatchee, along the river, and probably eight or nine miles above [461] this Trinidad Gauging Station.

Q. That is the Rock Island Dam?

A. That is the Rock Island Dam.

Q. And were your computations based on what you could do at a 24,000 second foot flow?

A. Yes, sir.

(Testimony of Gerald D. Hall.)

Q. And could you detail, Mr. Hall, what work would be necessary on this canal to secure the volume of water at the power house that you have described?

Mr. Ramsey: Just a minute. If the Court please, I am going to object to this line of testimony as being purely speculative. Here is a general plan made in 1938, not carried through and completed in 1943, and it seems to me moving into the realm of pure speculation when we start talking of enlarging the capacity of the plant on plans made five years before the government took over the plant, and using that as a basis for determining the prospective productive power of the generating plant.

The Court: I think I'll have the jury step out just a minute, and we can discuss this.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: All right, I would like to hear from you, Mr. Powell, as to what your purpose is here of this [462] testimony.

Mr. Powell: The purpose, if your Honor please, my understanding of the testimony is that the examinations were started in 1938 and the studies completed and part of the work done in 1940, and I assume that therefore part of the work would be done during low water stages in 1941, which was the time the war started, and the prices started to

(Testimony of Gerald D. Hall.)

go up, which of course naturally would change all conditions as far as the District and that improvement were concerned. Since the plans had been made and the work had been started and partially completed, we feel it is not speculative at all, but is part of a general plan of improvement that we're entitled to take into consideration in determining what a buyer, ready, able and willing to buy, fully informed, would take into consideration, that if the work were done 3500 feet or so below the intake, but other work to be done below that, the work already done would not be of full value until the other work were completed, and the purpose of the work being to get a full head of water at the power house at low stages of the river, which could not be obtained in the present condition of the power canal; and we will show later on, if your Honor please, the power production of the plant in '42, as showing the decline of power production during low water and the increase of power production during high water, and this testimony will show that it is possible to bring the power production up during the low water period, when there is plenty of water in the river but not enough water in the canal to operate at capacity, but with this work done it would be operated at capacity and increase the power production during that time of the season.

Mr. Ramsey: I think, if the Court please, that we must keep in mind all the testimony that's been adduced at the present time on this matter. The fact that in 1938 the Priest Rapids Irrigation Dis-

(Testimony of Gerald D. Hall.)

trict had made application for a government loan in the amount of more than \$400,000.00 for the rehabilitation of the District, its power plant and all the facilities of the District, which they never received. It is all very well to talk about a survey, and plans for improvement, but I think we should recognize and must recognize that carrying out that plan was dependent upon receiving a grant of Federal money, or being able to borrow under the guarantee of the government, a very large sum of money for a very small District, and that it never went through.

Mr. Cheadle: I dislike interrupting Mr. Ramsey, but he has not put in any evidence of that, if he is stating that the government is going to offer proof of that application for loan, and the date of it, and so on—— [464]

The Court: This witness testified, as I recall, that an application was made for a WPA grant——

Mr. Ramsey: PWA.

The Court: ——and loan in 1938, and I understood this survey was in connection with that application. It hasn't been shown by his testimony or any other that the loan had been allowed or granted.

Mr. Ramsey: If I recall correctly, I think there was some testimony on the part of the Chairman of the Board, also, that is, Mr. Salvini, about those plans in connection with the granting of the option on all of their lands to the Priest Rapids Development Company. I submit to the Court that we should not permit some of these plans that never matured to serve as a basis for opening up a very

(Testimony of Gerald D. Hall.)

wide field here. We're now confronted, if we go into this thing, with the proposition of inquiring into the cost of carrying through this proposed or projected plan of development, an inquiry into the amount that the generating capacity of the plant would be added thereby, and a sort of comparison for the purpose of determining whether the cost involved was so large as to make the thing not at all attractive. If we're going to take the position of a prospective buyer, all of those things would enter into his consideration of the situation; how much money he would have to put out, what the [465] results would be if he did put that out—we're opening up a very, very wide field, and I submit to the Court that it is speculative, purely and simply.

The Court: Have you anything further?

Mr. Powell: I don't see that we're opening a very wide field. We're limiting this to the investigation made from 1938 to 1940, and the improvement partially completed in 1940 before the war started.

The Court: Well, I think you should be permitted to show the history of this project down there, and show, if you care to, what improvements have been made and the extent to which they were actually completed prior to the time the government took over the property, but I don't believe it is proper to go into speculation as to what improvements could be made or might have been made in the future, had some plan been carried out. It is conceivable that a dam might be thrown all the way

(Testimony of Gerald D. Hall.)

across the Columbia River, I think there's some talk of that, and you could develop a plant comparable to Bonneville, but surely we can't go into that.

We have to take ~~that~~ plant as it existed up to the time the government took it over and to that extent the evidence will be admitted, but not speculating what might have been done sometime in the indefinite future.

Mr. Powell: I don't have it ready now, your Honor, we did not anticipate that we would be precluded from presenting evidence concerning a proposed clean-out of the channel, which is what it amounts to, of the power plant, and therefore we would like to have an opportunity to make an offer of proof on that subject.

The Court: I think you have. Testimony has gone in without objection, has it not, that you improved a part of the power canal channel, and that it will be necessary to enlarge the rest of it to get the full flow through the lower end of the canal. What else do you propose to prove, that you were going to do that in the future if you got a grant of money?

Mr. Powell: That it could be done at a nominal cost, or the reasonable cost that Mr. Hall made a study of.

The Court: Then we would have to let the government come in and show it couldn't be done at a reasonable cost. They could send their engineers down there and make a study. That it seems to me is going a little too far afield. I think I should limit

(Testimony of Gerald D. Hall.)

you to the plant as it stood, with the improvements that were made up to the time of the taking by the government; and you may make an offer of proof, of course, if you wish, in the absence of the jury, here, if you care to do so now.

Mr. Powell: Shall I state the offer of proof now, [467] your Honor?

The Court: Yes, if you're ready.

Mr. Powell: We offer to prove by this witness that starting in 1938 he made a study of the power canal and a survey of the power canal and planned canal improvements to be made, and that they were made in part in the year of 1940; that they were not completed at that time but that they could be completed at a cost of \$30,000.00, that they could have been completed at that time at a cost of \$30,000.00, which would have increased the flow of water at the power house by sufficient to produce maximum generation of power during the low water stages of the river, and that the improvements have not been made because of the fact that it was not possible to do the work after the low water stage in 1940 because of the intervention of the war in the fall, in December, of 1941; and if I may add this to the offer, if your Honor please, it is our theory that in view of the fact that this was within the contemplation of the sellers, and part of the work had been done, but by reason of the fact that part of it had been done, the maximum use or value of the work that had been done could not be realized until it was

(Testimony of Gerald D. Hall.)

completed, and that it would be information that a well informed buyer would want to secure or would want to have in order to make the purchase of the power plant and the power canal property.

The Court: Mr. Ramsey?

Mr. Ramsey: Objected to, if the Court please, for the reasons already stated.

The Court: Objection will be sustained. Exception allowed to the defendants. Call in the jury.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

Direct Examination

(Continued)

By Mr. Powell:

Q. What, if any, improvement work had been done at the spillway, Mr. Hall?

A. There had been a concrete wall installed, I think three or four years before that, and some openings left for stop log control of the flow of water.

Q. For what?

A. For control of the flow of water by stoplogs in through these openings. We did not do any work in the spillway section proper in 1940 or 1941.

Q. What was the purpose of this spillway?

A. Originally it was to provide a sluice-way for the upper section of the canal and to control elevation during low water, but after the conditions were changed, then the top of the concrete wall was much

(Testimony of Gerald D. Hall.)

higher than the elevation in the canal at low water, so only the sluice-way [469] section was then used.

Q. And when is the spillway actually in operation?

A. I couldn't answer that; it is—I think it would run over the wall when the river flow was up to around seventy or eighty thousand second feet; it would run over the wall automatically.

Q. When the flow of the river gets up to seventy or eighty thousand second feet?

A. That is as I recall it.

Q. And the purpose of it is to do what, besides act as a sluice-way for sand?

A. It flows below that. You would lose water through the opening if the spillway wall were not there under the old conditions, but when we deepened the canal the spillway then was not as effective as it had been previously.

Q. Well, during extreme high water what happened at the spillway?

A. Terrific waste at the spillway.

Q. Lots of water goes over the spillway. How high does the water get at the power house at that time?

A. I think the fore-bay elevation is 495. I don't find that here, quickly. That's above the power house, against the river elevation of 496, 997, at the rapids, and then during those periods the net head through the power plant is reduced because of the——[470]

(Testimony of Gerald D. Hall.)

Q. I don't need that figure, Mr. Hall, except that I wondered if you could tell us how far the water gets up on the upper side of the power house.

A. About six feet below the floor.

Q. About six feet below the floor?

A. Below the main floor.

Q. And when it gets up to that point does it back up the canal? A. Oh, yes.

Q. And runs out the spillway?

A. Considerable flow through the spillway.

Q. You say at that time the net head is reduced? A. Yes.

Q. Why is that?

A. Because the water at the foot of the rapids rise more in proportion than it does at the head.

Q. Why does it rise more at the foot than it does at the head of the rapids?

A. Difference in channel conditions of the river.

Q. Wider above than below?

A. I think the channel condition is different at the head, causing it to be shallow and wide. We have never taken channel survey readings. We had gauges in there, and read them simultaneously to see what the effect was, and eight-tenths of a foot at the head of the rapids, as I [471] recall it, this only applies to certain stages, would create a difference of four feet at the power house.

Q. Did you make an investigation at any time of the irrigation district, properties of the district, Mr. Hall? A. Yes.

(Testimony of Gerald D. Hall.)

Q. You were, I believe, with Mr. Tinling when he made his investigations? A. I was.

Q. And did you help him inventory any of the property?

A. On part of the electrical, yes. I worked on the other parts of the property principally.

Q. When did you make your investigation of the properties for inventory purposes?

A. I don't remember the exact month.

Q. In the year of 1943?

A. Yes; I think it was in April.

Q. And what did your investigation consist of?

A. Valuation of all properties, and my phase of the work was the canals and powerhouses, that type of construction; Mr. Tinling was electric.

Q. Mr. Tinling's was the electrical, and yours was the excavations and the structures?

A. Yes.

(Whereupon, Cost of Reproduction New, Canals and Structures, by G. D. Hall, was marked Defendant's Exhibit No. 11 for identification.)

Q. Mr. Hall, I hand you Defendant's identification 11, and will ask you to examine it, if you will, please.

The Court: What was the last question?

(Whereupon, the reporter read the last previous question.)

(Testimony of Gerald D. Hall.)

The Court: Hasn't he had time enough now to examine it and tell what it is? Let's get ahead with this.

Q. Yes, your Honor; I'm sorry.

A. This is a tabulation of the appraisals of the power canal, generating plant structures, Coyote Pumping Station structures, main irrigation canal, and the lateral system.

Q. Are the items that refer to the power canal and the generating plant stated separately from the pumping plant and the irrigation system?

A. They are.

Q. You have an item on page 2, Mr. Hall, of engineering and legal expense, 8 per cent?

A. Right.

Q. That has not been segregated, however, has is, or divided between the two different items?

A. It would have to be divided out separately for each item [473] if you wished to distribute it that way.

Q. What is the—rather, do the items, Mr. Hall, include the power canal and the generating plant structures? A. Yes.

Q. And are the quantities shown?

A. Quantities of excavation, concrete, reinforcing, other items are shown.

Q. And how did you arrive at the quantities?

A. The quantities of excavation are from the surveys taken for that job.

Q. And were there definite examinations of the quantities of concrete in the power plant?

A. Yes.

(Testimony of Gerald D. Hall.)

Q. And does that same thing apply to the pumping station?

A. Yes, the same method was used.

Q. How do you arrive at those quantities?

A. We use the original plans, check them by field measurements, and then computed the quantities in the same manner as you would for a contract.

Q. Does the same thing apply to the excavation of the main canal and the lateral system?

A. It does.

Q. Did you make the computation, Mr. Hall?

A. I checked them.

Q. Pardon. [474]

A. I checked them.

Q. Were they made under your supervision?

A. Yes.

Mr. Powell: We offer the identification in evidence, your Honor.

Mr. Ramsey: Objected to, if the Court please, for the same reasons urged in objecting to the introduction of Exhibit 9.

The Court: Objection will be overruled. Admitted.

Mr. Ramsey: Exception, please.

The Court: Exception is allowed.

(Whereupon, Defendant's Exhibit No. 11 for identification was admitted in evidence.)

Mr. Powell: I wonder if the Court would want the original?

The Court: No, that isn't necessary.

(Testimony of Gerald D. Hall.)

Mr. Powell: These are not photostatic copies; they are copies, however, which have been proofed.

The Court: If you're short of copies I can use the original and let you have this one.

Mr. Powell: No, there are thirteen here.

(Whereupon, the Clerk distributed copies of Defendant's Exhibit No. 11 to the jury and one alternate juror.)

Mr. Ramsey: May the record show that the government makes the same objection to the furnishing of copies of Exhibit 11 to the members of the jury as was made to the furnishing of copies of Exhibit 9 to the jury.

The Court: Yes, that may be shown. Objection is overruled and exception is allowed.

Mr. Powell: I understand that counsel is not objecting because they are copies?

Mr. Ramsey: No, there is no objection on that ground.

Direct Examination
(Continued)

Q. Now, Mr. Hall, referring to Defendant's Exhibit 11, on page 1 appears the power canal, is that correct? A. Right.

Q. And can you describe the method that you followed to arrive at the amount of excavation in the power canal?

A. We used our survey to compute the quantities for both the old canal and the proposed new quantities in excavating the upper end. We then

(Testimony of Gerald D. Hall.)

used the original records to check our computation of quantities in the old canal. Now, some of the work they did was washed away in later years. We had to make an allowance for that, so the quantity shown is less than that shown by original records.

Q. The quantity is what?

A. The quantity shown for the old canal is less than will be shown in the original records, the quantity shown here. [476]

Q. I see. And where did you get your unit price, Mr. Hall?

A. The lower end of the canal is taken partly from original records and partly from current bid prices. Most of the material in that section had to be loaded with a shovel and hauled out to the upper end, so the cost would be a little higher. However, being gravel, there wasn't so much drilling and shooting, blasting of material. I believe that unit price represented a good cross section of current bid prices for similar work at that time.

Q. At what time?

A. At the time of the appraisal.

Q. And why is there a difference between the original and subsequent excavation?

A. Because the work could be done better with machines upon the upper section, and we had actual bid prices, we used the actual bid prices for that part of the yardage shown.

Q. You used the bid prices for that portion?

A. That's right.

(Testimony of Gerald D. Hall.)

Q. You didn't do any work in 1943, did you?

A. No, in 1940 and 1941.

Q. You took the bid prices of 1940 and 1941 and applied them to the 1943 appraisal?

A. That's right.

Q. They actually were much lower than they were in 1943?

A. Yes, prices had begun to increase then. [477]

Q. So you have actually taken a much lower price than the price would have been in 1943?

A. The upper section I think the cost would have gone up in 1943; well, I think it would be lower, too, but here we used the actual cost prices and actual bid prices.

Q. And you have an item of spillway structure and crib dam?

A. Yes.

Q. And what then was your computation of the—by the way, Mr. Hall, what do these figures represent, a depreciated value or a new value as of 1943?

A. Well, the cost of reproduction new, or in equal condition.

Q. Or what?

A. Or in equal condition; the cost of reproduction in kind at that time.

Q. I think, Mr. Hall, you have two confusing terms, or two different terms there. The cost of reproduction new would be different than the reproduction in kind, wouldn't it?

A. That's right; if it is an excavation that hasn't deteriorated because of the sloughing of the

(Testimony of Gerald D. Hall.)

banks, and the channel is the same, the cost of reproduction would be equal without depreciation; there is no depreciation in that item. If it were concrete structure or pipe line, the appraisal is made on the basis of reproduction of actual physical kind, which I have termed reproduction in kind.

Q. Then your designation of cost of reproduction new is not entirely correct?

A. That's right.

Mr. Ramsey: May the record show, in the light of the explanation of the witness as to the basis of his appraisal, that the government interposes the same objection to the testimony of the witness as to reproduction cost, not plus depreciation, as it interposed at the introduction of the testimony of the preceding witness.

The Court: Yes, the record may show that, and the objection is overruled.

Mr. Powell: May I make this statement, so there will be no confusion? We are not claiming that the reproduction cost new is the sole element of value. It is merely one of the elements that would be taken into consideration by an informed buyer and an informed seller.

The Court: That is the purpose for which it is admitted.

Mr. Powell: Just as one of the elements to show value.

(Testimony of Gerald D. Hall.)

Direct Examination

(Continued)

Q. Now, what is the total value, Mr. Hall, as of 1943, of the power canal and the spillway and crib dam?

A. \$141,840, without the addition of 8 per cent for engineering and legal, which should be added to get your total cost for that item.

Q. And is there any depreciation, Mr. Hall, on an excavation of that kind?

A. Not in this particular instance, because when the canal was de-watered for work in 1940 and 1941 we found the original excavation was very nearly as it was left. In other words, your canal section had not changed much by usage.

Q. Now, what about the next item of generating plant structures?

A. Structure excavation is based upon prices at that time, and the plant, I might say, is set in rock. The concrete is based upon the same current bid price that we use here, \$30.00; reinforcing, 6 cents per pound, was the current bid price. The other items are in line with that same practice, with the exception of these operators' residences, which we estimated from comparable cost on the basis of replacing them in kind. They needed considerable maintenance in the way of paint and other items. The total of those items, without the engineering and general expense, is \$138,900.00.

(Testimony of Gerald D. Hall.)

Q. I noticed, Mr. Hall, the two large items under that particular heading are the structure excavation and the concrete. Why are the unit prices so high? [480]

A. Not unit prices; you mean total price?

Q. No, the unit price of rock excavation, \$4.00 a yard.

A. In that location it is necessary to excavate some rock below the river. You would have to de-water that. Then too, they were cutting little benches in the bank as they went back up, on which to set the power plant. That type of rock excavation is more expensive than to blast a road cut, for example.

Q. And about the concrete, what is the condition of the concrete now, or was it in 1943?

A. It's in very good condition.

Q. Pardon?

A. It's in very good condition.

Q. Is the concrete structure—can you tell by your examination whether it is well made or—

A. Well, there are no cracks of any consequence in the structure, and then we had to drill holes through the floor to install a new governor, piping, and do other work, and we found the concrete to be very hard.

Q. Now, your next item, Mr. Hall, Coyote Pumping Station.

A. Structure excavation in that location is easier, there is less quantity below water, so we used the unit price of \$2.00, used the same unit

(Testimony of Gerald D. Hall.)

price for the concrete as we did at Priest Rapids; reinforcing steel, because of a difference in character, there were some special I-beams, [481] caused us to use a higher unit price; then there had been installed in the river a timber intake, and that price was based largely upon historical value. It, like the cribbing at Priest Rapids, is in good condition; it's been under water practically continuously.

Q. Could you see it?

A. You could at low water, but the top was still below water, piping under the lowest of low water. The discharge pipe item shown of \$4900.00 was a new pipe that was purchased and on the ground, ready to replace the old pipe. No credit was given for the old discharge pipe. The operators' residences was appraised in the same manner as before for the other residences. The total of those items in connection with that station is \$36,940.00, without the addition of overhead expense.

Q. Now, Mr. Hall, before we leave the Coyote Pumping Station structure, you have discharge pipe, \$4900.00. What kind of a discharge pipe was installed in the pumping station in 1943?

A. It was a wood stave pipe.

Q. We noticed the other day there was a concrete discharge pipe. That was installed later?

A. I wouldn't know about that.

Q. When you made the inventory what—

A. There was only the wood stave pipe in operation. [482]

(Testimony of Gerald D. Hall.)

Q. Do you remember the size of the wood stave pipe? A. 72 inches, as I recall.

Q. How many were there? A. One.

Q. One discharge pipe?

A. There was another one there that had been abandoned the previous year, but that wasn't taken into consideration, where it was not even connected to the pumping plant. It had been cut off just above it.

Q. Now, where was the operators' residence located?

A. It was on a little higher ground, about 250 or 300 feet west and 100 feet south of the plant.

Q. All right, the next item, Mr. Hall.

A. This is the main irrigation canal. Because most of the material in that area is earth and sand, to be excavated easily, and it could be side-cast with a shovel, there's a unit price of 15 cents. The loose rock and gravel prices were based on current bid prices. In fact, we had a bid price of almost that amount for some enlargement. The flume was appraised on the basis of the value of the material and the frame. Concrete, because it was lining that could be placed without forms, we used a lower unit price: spillway, gates and checks, a lump sum, in comparison with similar structures elsewhere. We had some current bid prices on gates and checks of that kind. [483] We used a lower sum because of the condition of the gates.

Q. Now, what concrete does that refer to?

A. Pardon?

(Testimony of Gerald D. Hall.)

Q. What concrete is referred to there under that heading?

A. There is a concrete transition at the outlet of the discharge pipe, or rather there was; I think it was about fifty feet long. There were also some transitions down near the points of diversion in the spillway.

Q. What do you mean by concrete transition, Mr. Hall?

A. In this case the channel was rectangular at the outlet of the pipe, and the walls turned from the vertical to follow the slope, the walls of the channel where they contacted the earth, or rather went from concrete to earth.

Q. That is, the transition being a change from a pipe line or flume to a ditch?

A. So that the one end, say the outlet end of the pipe, corresponds closely to the area and shape of the pipe, and the channel is gradually changed to conform to the shape of the ditch at the outlet end, in this case.

Q. Now, what have you included, if anything, for concrete lining of the canals? A. Nothing.

Q. Nothing. Now, the next item is what, Mr. Hall? [484] A. Lateral system.

Q. That is put in at a lump sum, is it?

A. Yes. The construction cost of the canal, the total cost, \$68,400.00, the total of the items just previously discussed, was \$68,400.00, then the lateral system is a separate item and a single item. That value is based solely upon the condition of the

(Testimony of Gerald D. Hall.)

distribution system as compared to current distribution system costs of the Bureau of Reclamation.

Q. Do they correspond to bid prices?

A. Yes; we estimated the condition of the lateral system to be about 20 per cent of the average cost according to their contracts at that time.

Q. What, then, Mr. Hall, was the total figure that you had for this, the reproduction cost of these items?

A. The total was construction cost, \$395,080.00; adding general expense of \$31,606.40 makes a grand total of \$426,686.40.

Q. Now, what about this item of engineering and overhead, Mr. Hall? Engineering, legal, and overhead, or whatever it is?

A. That represents the average cost for projects of this type and size. I might add there that in looking up the historical cost I find it is closer to 10 per cent, because there was a great deal of expense involved in [485] acquiring titles and other procedure of that kind, so that when you deduct that from the other expense the original constructors had to bear, it comes very close to this 8 per cent.

Q. You can prepare, can you, a sheet, Mr. Hall, dividing that item and applying part of it to the power house and power canal and part of it to the pumping plant and the irrigation canal?

A. Yes, I can.

Mr. Powell: May we ask leave to do that, your Honor?

(Testimony of Gerald D. Hall.)

The Court: Yes, if you will segregate the power plant structures from the irrigation works structures.

Mr. Powell: You don't need to do it now, Mr. Hall.

Witness: I have part of it broken down now.

The Court: Well, it isn't necessary to do it now. The court will adjourn now until 10 o'clock tomorrow morning. We got along faster today so we'll quit a little earlier. As you go out, members of the jury, before you leave the building leave your notebooks and the copies of the exhibit with the bailiff. The court will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, the court took a recess in this cause until Thursday, February 13, 1947, at 10 o'clock a.m. [486])

Yakima, Washington, February 13, 1947.

10 o'clock a.m.

(All parties present as before, and the trial was resumed.)

The Court: Now, gentlemen of the jury, a question has been raised about the discharge pipe at the pumping station of the defendant. I understand that when you went down to view the premises you saw a concrete discharge pipe there, about 36 inches in diameter; two concrete discharge pipes. The testimony of the witness Hall has been that

there was formerly a 72 inch wood discharge pipe. It has been stipulated and agreed by counsel for the parties here that I may tell you that the old discharge pipe has been replaced since the government took over the property, so that you are to consider this property as having a 72 inch wood discharge pipe rather than the concrete discharge pipes which you saw. Is that clear? You may proceed.

Mr. Powell: I do not believe we had concluded last evening.

The Court: I don't believe so; I think you were still examining this witness.

GERALD D. HALL

a witness called on behalf of the defendant, resumed the stand and testified further as follows: [488]

Direct Examination

(Continued)

By Mr. Powell:

Q. Mr. Hall, the values that you, or the reproduction costs that you testified to, were they as of any particular date?

A. They were as of that date.

Q. As of the date you made them?

A. The date the valuation was made.

Q. Now, referring to the irrigation values, that is, the pumping plant and the discharge pipe and the main and lateral system, what changes would there be if you fix that value as of April 1, 1943?

(Testimony of Gerald D. Hall.)

A. None that I can recall. I was there just after the taking and there were no changes made then. There have been since.

Q. And the cost of reproduction that you testified to, then, would be the same on April 1 as your testimony has been; is that correct?

A. That is right.

Q. Now, that is April 1, 1943.

A. I think we made the appraisal in the middle of April or the latter part of April.

Q. There wasn't any change, then, between April 1 and the date you made the appraisal?

A. No.

Q. If you had to relate those figures back to April 1 would [489] there be any change?

A. None.

Q. Now, with reference to the power plant, your appraisal was made at the same time?

A. Right.

Q. And that was from data you had compiled previously?

A. It was compiled at the time of the appraisal.

Q. Now, what would be the difference in those cost figures, Mr. Hall, if you made your estimates of cost as of October 1, 1943, as to the power canal and the power house?

A. None.

Q. And why is that?

A. There had been very little change in construction costs in that period; there had been no changes made at the power house or the canal by the government.

(Testimony of Gerald D. Hall.)

Q. So the figures you testified to, Mr. Hall, were, in your opinion, the cost of reproduction of the canal and power house structures as of October 1, 1943, also? A. That is correct.

Q. Now, is there any appreciable quantity of land at the power house?

A. I am not certain as to the exact area; I believe it is near 80 acres.

Q. And what about the land at the Coyote Pumping Plant? [490]

A. I couldn't testify as to the area.

Mr. Powell: I wonder, if your Honor please, if counsel would be willing that we have one of the tract maps that the government has prepared? They have surveyed this property, I understand, and can give us a tract map so the area can be shown.

The Court: At the pumping plant?

Mr. Powell: It is all on one declaration of taking. I think the map is attached to the original declaration of taking.

The Court: I think there is a map attached to the declaration of taking, if you have a copy of it, Mr. Ramsey, that you could spare.

Mr. Ramsey: I have a map here, if the Court please, of the power plant area. Possibly I have another map here too.

Mr. Powell: We can go on now, your Honor.

The Court: Yes, all right.

(Testimony of Gerald D. Hall.)

Direct Examination

(Continued)

Q. Do you know what head, or rather, how high a lift there was for the irrigation water at the pumping plant?

A. That varied with the stage of the river. As I recall it, it approached, or rather averaged between 50 and 60 feet, but you had a maximum variation of 25 feet.

Q. A maximum variation of 25 feet? [491]

A. Between low water and high water.

Q. Would that be—rather, what would be your best estimate, Mr. Hall, of the low stage, of the amount of the lift at low stage?

A. I don't have that data in mind. That 25 feet of variation is the average variation, and does not refer to extreme low and extreme high years; it is the average of 25 years of record.

Q. And what was the amount of water pumped there?

A. The time I tested the efficiency of the station they were pumping 78,000 gallons a minute.

Q. And can you give that to us in second feet?

A. I beg your pardon, that is an error. That is the second feet I gave you; they were pumping 78 second feet, instead of 78,000.

Q. I didn't get that answer.

A. That was an error. I should have said 78 second feet, instead of 78,000 gallons per minute.

Q. Per minute?

(Testimony of Gerald D. Hall.)

A. 78 second feet, instead of 78,000 gallons per minute.

Q. Did the quantity of water vary with the lift?

A. Yes.

Q. I mean the quantity of water that was pumped

A. That's right, it does; the less head—the pumps will discharge more water at less lift, I should say. [492]

Q. Now, what was the condition of the pumps when you made your tests?

A. You have reference to the efficiency?

Q. Yes.

A. The over-all efficiency at the head condition at the item we made the test was 51½ per cent.

Q. Of the pumps?

A. No, that means the total energy produced by the pump water as compared with the electrical input necessary to produce it, which includes the losses in the motor and shaft as well as in the pumps.

Q. What is ordinary—you don't get 100 per cent efficiency from a machine like that, do you, Mr. Hall?

A. No, sir.

Q. What is the ordinary percentage of efficiency?

A. We recently awarded some bids on a guaranteed efficiency of 72 per cent.

Q. And does that percentage of efficiency vary with the lift?

A. Yes; that is for one stated condition of lift?

(Testimony of Gerald D. Hall.)

Q. I see, and that would be the efficiency of new pumps, is that right? A. That is right.

Q. 72 per cent?

A. Pump and motor included.

Q. And in this particular instance when you ran your tests [493] they were 51 per cent?

A. 51½ per cent.

Q. Now, did you make any tests to determine the amount of water that was lost in the canal?

A. We tested two reaches, one about five miles in length, and the other three miles further down. The total loss in the two reaches was then two and a half second feet against a 78 second foot input, which would be slightly over 3 per cent.

Q. And what was the condition of the concrete lining of the canal?

A. The lining of the canal was badly broken. It had some value as seepage preventive, but not a great deal. The silting of the canal that has occurred through the years has been more effective than anything.

Q. And is that why the loss was low?

A. Yes.

Q. Do you consider that loss low, or high?

A. That loss was lower than average at that time, and it could have been higher further in the season.

Q. What time of the year did you make the test?

A. I'd have to go back to the test notes. I can't recall the month.

(Testimony of Gerald D. Hall.)

Q. Were you here present when Mr. Tinling testified yesterday? A. Yes. [494]

Mr. Powell: I have here, if your Honor please, the two tabulations that were mentioned, to segregate the power and the irrigation values. Before they're marked would your Honor like to see them?

The Court: Yes, please.

Mr. Powell: Do you have copies, Mr. Hall?

The Witness: Yes, I have.

The Court: Have you seen these, Mr. Ramsey?

Mr. Ramsey: Yes, your Honor.

The Court: Well, you can mark them.

(Whereupon, summation of values was marked Defendant's Exhibit No. 12 for identification.)

(Whereupon, compilation of Exhibits 9 and 11 was marked Defendant's Exhibit No. 13 for identification.)

The Court: What the Court had in mind was simply a segregation of the values put on this property by the witnesses on the exhibits already put in evidence, for the convenience of the witnesses, so as to show separate totals for the pumping plant facilities and the power plant facilities. The second one, 13, it does not show on the face of it that it is a compilation of the figures contained in another exhibit. What is that exhibit, Mr. Hall's?

Mr. Powell: 13 is a compilation of both exhibits 9 and 11. It refers to both. The total figure at the bottom is the figure that was arrived at by adding both of the figures together.

(Testimony of Gerald D. Hall.)

The Court: Yes. Well, the thought that the court has in mind, these exhibits here are merely the testimony of the witnesses who have identified them and said that is the result of their findings and studies. This exhibit should not be just put in here as a list of figures, but should be tied down, it seems to me, to the particular witness who testified to this, so it will not be put to the jury as having any virtue of its own, apart from the testimony.

Mr. Powell: I might state that the word "Values" appearing on there does not mean it is the value. It is the evidence of the cost.

The Court: It is the evidence of the reproduction cost, which is only an element tending to prove market value; for that purpose, at any rate. You haven't offered that yet, have you?

Mr. Powell: No, but I'll be glad to have that——

The Court: Well, before you do that, perhaps you had better offer them and give Mr. Ramsey a chance to express his thoughts.

Direct Examination

(Continued)

Q. I hand you Defendant's identification 12, Mr. Hall, and [496] ask you if you know what it is?

A. This is a——

Q. Just say yes or no. A. Yes.

Q. What is it?

A. It is a segregation of the total values of the power plant facilities and irrigation features made by Mr. Tinling with relation to the electrical features.

(Testimony of Gerald D. Hall.)

Mr. Powell: We offer defendant's identification 12 in evidence.

Mr. Ramsey: Objected to, if the Court please, first upon the grounds that the figures represent reproduction cost without any deduction for depreciation, and that value cannot be shown on a reproduction cost basis without including as an element of that proof depreciation and submitting to the jury not the figure of reproduction cost alone, but the figure reached by deducting from that the depreciation. It is further objected to for the reason that the exhibits offered represent nothing more than a compilation of figures testified to, not only by this witness but by the preceding witness, and now submitted to the jury as a whole, that is, a compilation of the testimony of the two witnesses. Further objection is made that the exhibits present this to the jury as a total value of power generation [497] facilities and total value of irrigation facilities.

The Court: May I see that number again, please?

Mr. Powell: The originals, your Honor?

The Court: Yes. Well, the jury may step out just a minute, please. We'll try to get this settled as soon as we can.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: Let's see, this one that is offered now is 13?

(Testimony of Gerald D. Hall.)

Mr. Powell: I offered 12, your Honor.

The Court: 12. I think that Mr. Ramsey has an objection there that should be considered, the matter of lumping the testimony of two different witnesses here and making a summary of the testimony of both. If we start out with that practice, every time we had a new witness you could put in a new summary and total everything up that's gone before, or average it. What the court had in mind, purely for the convenience of the jury and my convenience, under the theory the court has adopted here there must be separate findings of what we call irrigation assets and property and non-irrigation assets and property, that when these witnesses testify as to value there should be some segregation as between the pumping [498] plant and the irrigation works, and the power plant works. Otherwise it is going to be very confusing for the jury. It is difficult enough as it is. What I had in mind as to each of your exhibits here, if you could put in a separate exhibit or attach to the exhibit a summary showing the segregation, but derived wholly from the exhibit, and not mix up two or three exhibits, or the testimony of two or three witnesses, in the summary. I think it is something that could have been put in before the exhibit was offered. I think you can total and recapitulate in one of these exhibits. What I had in mind was to take up one of these exhibits here that represents the testimony of the witness as to value, and make your recapitulation, separating the power plant total from the pumping plant total. Is that clear?

(Testimony of Gerald D. Hall.)

Mr. Powell: Yes. I think from Mr. Hall's Exhibit, Number 11, that can be done by adding two totals for the power and two for the irrigation, and I think that is not necessary, if your Honor will look at it again; the total of both of them appears on the exhibit, but the sub-totals show the various items.

The Court: Well, let's see. Here's the power canal, that would be power, of course. Generating plant; pumping plant structures; irrigation canal. Well, here's the difficulty about this. He's got them separated here, [499] although I don't see any sub-total for your irrigation works. Under the irrigation here you have pumping plant structures, \$36,940.00; main irrigation canal, \$68,400.00; lateral system, \$9,000.00, and then you've got your engineering and legal item, representing 8 per cent of the grand total, that isn't segregated.

Mr. Powell: Let me withdraw these, then, your Honor please, and prepare them in shorter form.

The Court: I know the jury probably are not much better than I am at figures, and it would be quite a job for me to sit down and figure this out as to the different totals there. I think perhaps if you will withdraw these and have them prepared again in accordance with the court's idea, and Mr. Ramsey will have an opportunity, of course, to object again.

(Whereupon, Defendant's Identifications 12 and 13 were withdrawn.)

(Testimony of Gerald D. Hall.)

Mr. Ramsey: While the jury is out, in the matter of these maps counsel has inquired about, I am not sure I have anything here that would be proper. If the Court and counsel care to examine the maps I do have, I will be glad to submit them.

The Court: Well, I think all we're trying to do here is get a map you can both agree on, that will show the land involved in this action belonging to the District. Isn't that what you wanted to get?

Mr. Powell: Correct.

Mr. Ramsey: Well, in this map the entire area of the District is shown, for the reason that we took the rights of way of the District for canals, pipe lines, and what have you, throughout the entire area. At this point is shown land of the Priest Rapids Irrigation District at the power plant. Apparently the amount owned at the Coyote Rapids was so small that if anything, it represents nothing more than a red dot. Now, I do have another map which shows without coloring the land at the power site itself. I don't think that map is of very much value to you because it is so small at the point of ownership. It does not show much because at the center of the map it shows the entire district.

Mr. Powell: In these other cases, if your Honor please, the government had tract maps prepared showing the area and showing in a general way the total area, which could be computed in acres. I thought perhaps the government had a similar map in this case. We don't have any evidence here as to the amount of acreage owned by the District.

(Testimony of Gerald D. Hall.)

Mr. Ramsey: I think that will be shown by the declaration of taking and the petition. As a matter of fact, under this declaration of taking 99, it was a scattergun [500] proposition, and included in that was all of the right of ways for canals and ditches and pipe lines, and in preparing the map they colored the entire area embraced in the Priest Rapids Irrigation District, for the purpose of showing the area in which the rights of way were taken, so as an ownership map it is almost valueless. This particular map here does show the ownership data at the power plant, however, it is just a direct line enclosing the ownership.

The Court: I might say, I think I mentioned this before, I had in mind submitting the amended petition to the jury to take with them, but not the declaration of taking. It doesn't seem to me that is advisable in view of the fact an amount is stated in there as the estimated value of the property. I don't know just who that would favor; I haven't figured that out, but I will submit the amended petition, but there isn't any question about the acreage, is there, as set out in the petition?

Mr. Powell: I don't know that the acreage is given as to each tract. We can investigate that later. I don't want to take the court's time.

The Court: Yes, all right. Bring in the jury. Are you ready to proceed?

Mr. Powell: Yes. I thought perhaps, if your Honor please, rather than take the time of the Court and [501] jury, we can prepare these matters for

(Testimony of Gerald D. Hall.)

the jury, if we can agree, then we can present them without taking the court's time.

The Court: Yes; I think Mr. Ramsey would want to reserve his general objection, but he might be able to agree with you as to the form of the compilation totalling them.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

Mr. Powell: That is all, your Honor. You may cross examine.

Cross-Examination

By Mr. Ramsey:

Q. Mr. Hall, with reference to the power plant structures, that structure is about 39 years old at the present time, is it not?

A. Just about, yes.

Q. That is true also of the pumping plant structure?

A. Yes.

Q. Both of these are concrete buildings?

A. That is correct.

Q. Now, what would you say is the normal life of a concrete building, that is, the normal useful life of a concrete building?

A. The oldest concrete structure that I know is 45 years old. [502] It is serving its purpose. You say useful life—you might mean obsolescence in there, Mr. Ramsey, but structurally this building that is 45 years old is sound.

(Testimony of Gerald D. Hall.)

Q. There is a depreciation from year to year, however, in concrete structures, is there not, a very determinable lifetime?

A. Depends on the type of structures. Certain types of canal lining deteriorate because of cracking and cross feeding; pumping plant structures, I know some others 30 odd years old that have not deteriorated.

Q. However, there is a depreciation from year to year in those structures?

A. Not a measurable depreciation or deterioration as in timber structures.

Q. Well, you say not a measurable depreciation. Would you consider that you might confidently count on a concrete structure being in a usable condition 100 years after it was built?

A. I have seen a group of large bridges that were 150 years old; Roman aqueducts were 400.

Q. Roman aqueducts were not concrete, were they?

A. They were built of natural cement and stone.

Q. Now, concrete bridges are steel re-enforced throughout, are they not?

A. Yes, sir. [503]

Q. That isn't true of a concrete building, is it?

A. That is generally true; they're also re-enforced.

Q. Are they re-enforced to the same degree that a bridge is?

A. No.

Q. Would you say, Mr. Hall, as an engineer, that there is no depreciation on a concrete structure?

(Testimony of Gerald D. Hall.)

A. I did not say there was no depreciation on a concrete structure. I said there was very little depreciation on certain types.

Q. I understand, of course, it varies as to type of structure and type of construction.

A. If you measure concrete by maintenance costs, there has not been any money spent on the Priest Rapids on maintenance, and it was started in operation in 1908, and construction was started in 1907.

Q. You say there has been no money spent in maintenance? A. Building maintenance.

Q. Aside from the concrete shell itself, of what are the floors in that building constructed?

A. Concrete.

Q. The interior—is there any wood used in the interior of the building?

A. I think there is in some places, and also in the blacksmith shop which is attached to the original building.

Q. Any depreciation in that part of the building? [504]

A. Oh, yes, the blacksmith shop needs repairs.

Q. Well, the thing particularly that I am interested in here, Mr. Hall, in appraising as an engineer a concrete structure, in arriving at the fair value of that structure would you take into consideration the age of the structure or would you put the same value on a structure 100 years old that you would on a brand new concrete structure?

A. No, but on the other hand, I testified to replacement in kind.

(Testimony of Gerald D. Hall.)

Q. I understand that. I'm getting into another angle now, altogether.

A. It is a difficult thing to explain the facts on those structures. I felt that the value assigned was replacement in equal condition at the time.

Q. Well, now, just a minute, getting back here to your testimony. Concrete, 2900 cubic yards, \$30.00 a yard. That represented, as I understood your testimony, what it would have cost to have poured that concrete at the time you made the appraisal.

A. That is correct.

Q. That was the cost of the concrete on that date. Now, you speak of replacing in kind. Actually your appraisal there on that concrete is a replacement by brand new concrete, isn't it, on the prices then prevailing?

A. That's right, equal in strength and condition to the [505] other building.

Q. Yes. Re-enforcing, 60,000 pounds, at 6 cents a pound, that was brand new re-enforcing on the prices then prevailing, wasn't it.

A. That's right.

Q. So actually your values ascribed to this building is just what it would take to rebuild that building from top to bottom out of brand new material at the time that you made the appraisal?

A. That is right.

Q. Now, I am asking you, Mr. Hall, as an engineer, in appraising concrete structures of this character, would you put the same value on a structure 100 years old as you would a brand new structure, identical in building?

(Testimony of Gerald D. Hall.)

A. From the viewpoint of obsolescence, no; from structural strength, yes, if it is in good condition.

Q. You consider that a concrete structure is ever-lasting?

A. No, but there's been very little deterioration in certain types of structures, proved by time.

Q. I understand that your rate of deterioration varied with the different type of structure, but the fact remains there is a very definite deterioration in any kind of concrete structure, isn't there?

A. Not in all kinds.

Q. Well, do you know of any type of concrete structure that [506] is ever-lasting?

A. No, I haven't lived that long.

Q. Have you any reason as an engineer to believe that there could be a concrete structure that would be everlasting?

A. There could be in certain types of foundations structures that would last a good many years. We have records on that now.

Q. Unquestionably, Mr. Hall, it would last a good many years. A timber structure will last a good many years, if it is properly taken care of, nevertheless it has a definite life span, doesn't it? It isn't ever-lasting?

A. Ever-lasting is too inclusive for me to form an opinion on, but I do know of structures that are in good condition that have lasted, oh, one 45, we have history on other structures of 200 and 300 years that are still in service for the purpose for which they were built.

(Testimony of Gerald D. Hall.)

Q. Yes.

A. They may have deteriorated. I would measure the depreciation by the amount of maintenance required. If the maintenance cost exceeds the cost of replacing with something better, then it has reached the end of its useful life, although it may still have physical life.

Q. In other words, Mr. Hall, you consider that a concrete structure if it is maintained will last indefinitely?

A. Yes, structures of that type I believe will.

Q. Nevertheless it requires maintenance to last indefinitely, doesn't it?

A. Yes, and that's the point.

Q. And a brand new structure doesn't require any maintenance for a considerable period thereafter, does it?

A. That is correct.

Q. However, as the structure gets older it requires more and more maintenance, isn't that correct?

A. That depends upon the type. In this case there's been no maintenance of the power house structure itself.

Q. Very many cracks in the structure?

A. No.

Q. Any chipping?

A. No; there's some weathering on the exterior.

Q. As an engineer would you expect that in the course of time there would be chipping and cracking there?

(Testimony of Gerald D. Hall.)

A. There might be; there might be damage caused by earthquakes that would cause a structure to be useless.

Q. Well, then, let me ask you a straight question, Mr. Hall. In your opinion is that structure out there, those two structures out there, the pumping plant and the power house, now 39 years old, as valuable in dollars as they were the day they were built, or as they would be today if they were brand new, for sales purposes?

A. I believe they are in this respect, for use.

Q. Now, just a minute, Mr. Hall; I'm not inquiring about whether they can continue to be used. We're engaged here in attempting to fix a value for sale purposes.

A. There is no sale for buildings of that kind if they can't be used.

Mr. Powell: May I ask counsel if he's inquiring today, or in April, or October, 1943, almost four years ago.

Mr. Ramsey: I can get back to that very easily. I am trying to determine whether this witness is recognizing any depreciation at all in the sales value.

(Whereupon, the reporter read the last previous question.)

Q. Now, in your opinion, Mr. Hall, are those structures out there, now 39 years old, worth just as much as structures that were built today replacing them in kind would be worth?

A. If sold as an operating property, yes.

(Testimony of Gerald D. Hall.)

Q. Is an operating property generally sold at 100 per cent of its cost, original cost or replacement cost?

A. No, it depends on the earning value and other factors.

Q. Yes, including depreciation?

A. Depreciation of certain elements, yes.

Q. Yes. Now, have you ever acted as a witness in these P.U.D. cases where electrical generation properties are being [509] taken over?

A. No, I have not.

Q. Do you know anything about their method of computing the value on those properties?

A. No, not in P.U.D.

Q. Have you ever acted for the purpose of appraising properties of this character for a purchaser or a seller?

A. Water works properties.

Q. Which?

A. Water works properties, principally.

Q. Did you ever appraise one of those properties without taking into consideration the depreciation and obsolescence factors?

A. No, I depreciated the pipe according to the type of material, very definitely. Certain types of structures carried very low or little depreciation.

Q. Yes, but they all carry depreciation, don't they?

A. Not all items. You have, for example, cast iron pipe that has been in use now for about 290 years. It is still the original pipe; there is very little depreciation there.

(Testimony of Gerald D. Hall.)

Q. You say very little. Now, we're making the distinction between very little and none. I understand, of course, that if the life of anything is extended over 100 years, we'll say, that your rate of depreciation will be [510] materially less than if the life of that particular thing is 60 years, or 10 years, nevertheless, you do recognize that there is a constant depreciation, don't you?

A. That is a difficult question to answer. By constant depreciation do you mean a uniform rate per year, or an assigned rate after a number of years?

Q. Take it either way.

A. For, I'd say, 100 years, there would be practically little or no depreciation of this power house as a structure, unless damaged by other factors.

Q. Well, then, let's get back to my original question. In your opinion, those concrete structures, now 39 years old, are worth dollar for dollar, for sale or purchase, exactly as much as if they had been constructed and finished yesterday?

A. No, I said they were worth the appraisal that I made of it at that time.

Q. Now, your appraisal was based on that very thing, and included brand new materials at prevailing rates, and labor at prevailing rates, and every other item that went into the cost of constructing those buildings, didn't it?

A. At the average rate at that time.

Q. Yes. Now, I'm asking you if in your opinion those buildings out there, 39 years old, are worth

(Testimony of Gerald D. Hall.)

for dollar as much as they would be if they just been completed [511] and were ready for sale today.

Mr. Powell: Today?

Mr. Ramsey: Today.

Mr. Powell: We're appraising them 4 years ago.

Mr. Ramsey: I'm not appraising them at all. I am testing the witness.

A. Well, at the time of the appraisal I'd say they were worth just as much.

Q. Do you think there has been a distinct variation in their value between 1943 and today?

A. Yes, sir; definitely.

Q. In what way?

A. Increase, because our bid prices are up.

Q. And if you were appraising the property today on a replacement basis your valuation would be higher, wouldn't it? A. Yes.

Q. Yes. Then your position is simply this, that a concrete structure of that character in 40 years does not depreciate at all in time?

A. That one hasn't required any maintenance, if you measure depreciation in maintenance.

Q. I am not interested in the slightest degree in whether there has been maintenance had on those buildings. I am asking you the straight question, if in your opinion [512] those two structures 40 years after they were constructed have not depreciated one dime in value?

A. I wouldn't say that, but they're substantially the same value.

(Testimony of Gerald D. Hall.)

Q. And you recognize no depreciation whatever? A. Not in that particular instance.

Q. In your opinion was there any depreciation in that power canal out there? A. No.

Q. Those canals of that character ordinarily do some silting up, do they not?

A. In this case that wouldn't hinder, providing it wasn't a sufficiently large deposit to interfere with the capacity of the canal.

Q. Well, could the bottom of that canal be filled up with sand without interfering with the capacity of the canal? A. No, not filled to any depth.

Q. Well, ordinarily, doesn't a canal of that sort, where it is taken from the river and carried for a distance of I don't know how long, this canal is about 2 miles? A. That's right.

Q. Carried for 2 miles at a much less rate of fall than the stream is, isn't there a tendency, particularly during high water when the water is muddy, to get a deposit of silt in the bottom of the canal? [513]

A. If there is any deposit, and there may be under those conditions you mentioned, during periods of low water it will flush out through the canal. That was evidenced by the operations at the plant.

Q. Now, may I ask just why, in your plans for the rehabilitation of that canal, you wanted an additional head for that very purpose?

A. That's right; that was to prevent the sand that is continuing to be along the bottom from going through the turbines.

(Testimony of Gerald D. Hall.)

Q. Yes.

A. But those don't remain stationary; they go along with the water.

Q. Would there be any less sand brought in by reason of adding an additional head and intake to that canal?

A. There might be, under some conditions. That was the reason for providing the additional waste-way capacity. I may have mis-understood you when you said head. I thought you meant quantity of water.

Q. Well, I am speaking of quantity of water in the canal.

A. That was the idea, yes.

Q. Then why did you consider it was necessary to add to the quantity of water going through that canal for the purpose, as you stated, of preventing silting up of the canal? [514]

A. No, that material wouldn't remain; it would go on through the turbines if we didn't divert it through the spillway.

Q. Now, just how do you take this sediment out of the water so it won't go through the turbines? How do you propose to do that?

A. That was only to take out the coarse particles that go along the bottom of the canal. That is done in a number of ways, sometimes a depression in the canal and taken out the side at the intake of the power house.

Q. Was there any change in the original intake channel of that canal between the time it was first put in there in 1907 and the time you cut the new channel over there?

A. Oh, yes.

(Testimony of Gerald D. Hall.)

Q. And what was the nature of that change?

A. There had been obstructions removed. I've forgotten how many; I know of three times there's been work on the canal to improve its capacity.

Q. Well, I don't know whether you understood my question. You did cut a new intake channel for the canal.

A. That's right.

Q. Now, as to the old intake channel——

A. That was also enlarged. We proposed to use both of them.

Q. And what made it necessary to enlarge that intake? Had it changed in any manner between 1907 and the time you were working out there?

A. I think there had been some work done there in 1933 or 1934; I'm not certain of that.

Q. Do you know what required that work to be done?

A. They wanted more water for power.

Q. Had anything occurred that cut down the capacity of that intake between 1907 and the time they did the work on it in 1933 or 1934?

A. Yes, there had been one section of dike on the island washed away, which decreased the head under the original plans.

Q. And I believe you stated that when you were out there working you found that the east end of the crib dam had been washed out?

A. That's right.

Q. And it was necessary to replace that?

A. We did that by large boulders pushed in, using a bulldozer. It was only a short section.

(Testimony of Gerald D. Hall.)

Q. Then am I right in assuming that over a period of years there is a depreciation in those canal facilities that require replacement and additional work?

A. This additional work here was for the purpose of increasing the capacity, not to repair silting of the canal, because when we de-watered it we found the canal sections very close to the original excavation, that is, the part on the lower end that had been excavated on a true section. [516]

Q. Well, now, your work on that crib dam was not a betterment, was it?

A. Well, when you said canal, I didn't consider the crib dam as part of the canal.

Q. Well, it is the means by which you divert the water into the canal, isn't it?

A. Yes, there is maintenance on the crib dam.

Q. Yes. Going on down to the irrigation system, what was the condition of the distribution system of the Priest Rapids Irrigation District at the time that you went in there and made your investigation?

A. The canal was in good condition as to seepage losses. Going further into the distribution, if you have reference to the lateral distribution——

Q. Well, I am referring to the entire system.

A. Well, the canal was in very good shape, but the laterals were not.

Q. There was a very heavy loss of water, wasn't there, through that system by seepage?

A. No, it wasn't greater than, in fact it was less than, the Sunnyside project.

(Testimony of Gerald D. Hall.)

Q. Well, without reference to the Sunnyside project, about what per cent of the water that was pumped into that system actually got on to the land that was being irrigated? [517]

A. At the time I made my tests and the checks of deliveries there was about 18 per cent.

Q. Loss?

A. Yes, that is correct. Now, I said a moment ago that losses vary with season, Mr. Ramsey, and that's true. Your losses in the main canal at the time I made that test was less than they should have been for that distance, and they have been found to be less than that by Dr. Woodburn two years before; however, if you have a bad winter, heavy freezing, your losses will go up until the canal is re-silted, so when I testified to percentage losses there, that was just at the time of the test.

Q. Yes. Now, that portion of the canal which had been concrete lined, the concrete had been very thoroughly broken up, hadn't it?

A. That is correct.

Q. And so far as any concrete lining was concerned, it served no useful purpose whatever?

A. It would probably reduce the losses a little, but it wasn't a true lining.

Q. Would you say that those ditches and canals, considering also that a portion, that a large portion, of the lateral system was pipe lines, had had no depreciation over 37 years?

A. Oh, yes; the canal very little, but the pipe lines definitely have. [518]

(Testimony of Gerald D. Hall.)

Q. You've made no allowance in your testimony for depreciation of anything, have you?

A. Oh, yes; in the lateral system, I reduced that to about 20 per cent of its original cost.

Q. You did recognize a depreciation there?

A. Oh, yes; wood stave pipe has a very definite life.

Q. Now, I note an item of engineering and legal, \$31,606.40. What does that cover?

A. That would cover all plans, field inspection, field surveys, and the necessary legal expenses of the organization of the district for the signing of contracts, the acquisition of new rights of way, and matters of that kind. Actually there should be also included publishing and some other office expense in there.

Q. In other words, you have included as a part of the replacement construction cost here all of the anticipated engineering expenses, anticipated legal expenses, and all anticipated stenographic expenses or office expenses in connection with the construction of the project?

A. That's right.

Mr. Ramsey: I think that's all.

The Court: Any further questions?

Mr. Powell: Yes, your Honor.

The Court: All right. [519]

Redirect Examination

By Mr. Powell:

Q. Mr. Hall, if a contract is let to do the work, aren't those expenses included in the contract?

(Testimony of Gerald D. Hall.)

A. The contract covers only actual contract construction. The owner bears the other costs necessary to the supervising of that contract, and the making of the plans, so that is the reason for the items.

Q. So who would pay this \$31,000.00 item in the replacement of this system, the contractor or the owner? A. The owner.

Q. And that is figured as part of the owner's expense, is that right? A. That is correct.

Q. Now, I believe you said you recognized the depreciation in the pipe lines and lateral system?

A. Yes, sir.

Q. And that figure, then, of the lateral system, does that represent the actual cost of replacing the system new?

A. No, that would be replacement in kind, or allowing for depreciation.

Q. Now, you have depreciated the canal lining 100 per cent, haven't you?

A. That is correct.

Q. Now, what is the condition, may I ask, of the cement, that is, the physical cement, in the power plant itself? [520]

A. It's in very good condition.

Q. Is the quantity that was used in making this structure more, or less, than would be used today?

A. That type of design, it is probably close to what would be used for those types of structures. You must use enough head room in the power house to enable you to operate a crane so you can

(Testimony of Gerald D. Hall.)

lift the long shafts and the generators up for repairs. You would require almost the same working area as you have now. There would be some changes in draft tubes, and there would be scroll cases instead of flumes. Off-hand I would say it would be very close.

Q. What about the walls, are they thick?

A. I don't recall the thickness, but it's a heavy structure throughout.

Q. It is a heavy structure throughout?

A. Yes.

Q. What supports the floor that holds up the machinery?

A. That floor is supported by partitions into the walls and the foundations; the supports continue on down through the lower floors to the rock.

Q. Is there an archway?

A. There are arches through the supporting walls.

Q. How much does one of these machines weigh, that is, a generator and turbine and shaft? [521]

A. I can't give you the weight, but the total load on the thrust bearing, which includes your hydraulic bearing, I think is 157,000 pounds. The thrust bearing is on top of the generator on number 2 machine.

Q. Now, you were asked on cross examination, Mr. Hall, about the depreciation in the power canal, and the repairs made in 1933. Were you there or familiar with them at that time?

A. No; that may be '33 or '35; I wasn't there then.

(Testimony of Gerald D. Hall.)

Q. Did you see the canal when it was de-watered in 1940 or 1941? A. Yes.

Q. By the way, have you been able to determine what date this work was completed, the last work?

A. In March of 1941.

Q. In March of 1941? A. Yes.

Q. And I believe you said that this work was done for the purpose of getting more water down to the power house? A. That's right.

The Court: We will recess now for ten minutes.

(Short recess)

(All parties present as before, and the trial was resumed.)

Redirect Examination

(Continued)

By Mr. Powell: [522]

Q. In your canal work there, Mr. Hall, did the work that was done there increase the flow of water in the canal? A. Yes, it did.

Q. And at what stage of the river?

A. At the low stages.

Q. And is there enough water, was there enough water, at the low stages of the river to operate the power plant at full capacity?

A. There was enough water in the river, yes.

Q. Just a matter of getting it into the canal, is that right? A. That's right.

Q. And do the obstructions in the canal that were there in 1943 retard the flow of the river?

A. Yes, they do.

(Testimony of Gerald D. Hall.)

Q. And the flow of the canal?

A. Beg your pardon, I meant the flow of the canal.

Q. And can those obstructions be seen from the surface of the water?

A. You can if the water is clear, you can see where the width and depth is inadequate.

Q. And why do the obstructions in the canal hold back the water if the water actually gets in the canal?

A. Well, the water doesn't enter the canal because of those obstructions, although the upper end is accomplished to a size that would permit the quantity to enter when the [523] remainder of the canal is enlarged.

Q. And where were these points in the canal where the obstructions were in 1943?

A. The canal is undersize from a point 3100 feet above the plant to 8400 feet above the plant, a distance of about a mile.

Q. And in 1943 how many yards of material would be required to be removed to remove those obstructions?

A. As I recall that, it was between 90 and 100 thousand.

Q. Now, you mentioned the efficiency of these pumps at 51½ per cent? A. Yes.

Q. How many pumps are there there?

A. There are three.

Q. And is that with the use of all three pumps?

A. No, that was testing only the two old pumps.

(Testimony of Gerald D. Hall.)

Q. The two old pumps?

A. They were the ones in operation at the time of test.

Q. And were they connected in series?

A. Yes.

Q. The two old pumps, the two pumps connected in series, were the ones that were——

A. They were the ones that were tested.

Q. And was the new pump tested then?

A. No, it was not operating at that time. [524]

Q. And why wasn't it?

A. They had sufficient flow in the canal. I believe the test was after the peak of the season demand was over, when they had changed from operating the center pump to the two old pumps, to reduce the demand.

Q. You mean to——

A. To reduce the demand for electricity or power.

Q. In 1941 when this work was completed, Mr. Hall, on the power canal, could it be seen that the flow was obstructed by the side walls of the canal?

A. Yes.

Q. And also the fact that the canal was not of equal width throughout. A. That's right.

Q. You could see that without using instruments, is that correct? A. Oh, yes.

Q. And where do you have to be in the canal to see that? A. Just along the bank.

Q. On which bank?

(Testimony of Gerald D. Hall.)

A. Either one, as far as watching or observing the contracted portions of the canal.

Mr. Powell: That's all.

Mr. Ramsey: That's all.

(Whereupon, there being no further questions, the witness was excused.) [525]

Mr. Ramsey: The government moves to strike all of the testimony of the witness Hall relative to the value of the properties of the Priest Rapids Irrigation District, and instruct the jury to disregard the whole of said testimony upon the grounds and for the reason that it appears that the values fixed by the witness were fixed entirely upon the basis of reproduction cost.

The Court: The motion will be denied.

Mr. Ramsey: Exception, please.

The Court: Exception allowed.

HUGH B. TINLING

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

By Mr. Powell:

(Whereupon, Power data for the year 1942 was marked Defendant's Exhibit No. 14 for identification.)

Q. Mr. Tinling, I hand you defendant's identification 14, and will ask you if you know what it is?

A. This is a tabulation of the kilowatt hours

(Testimony of Hugh B. Tinling.)

generated in the Priest Rapids Irrigation power house, and the amount used by the District, the amount used at the Coyote Pumping Plant, and the amount on the Priest Rapids line at the plant, and the amount on the Priest Rapids line less the amount at the Coyote Pumping Plant, kilowatt hours, [526] as taken from the power house operator's daily data sheets, as identified by Mr. Yeager, and as taken from computations and billings which were identified by Mr. Salvini.

Q. That is the daily sheets for the year of 1942, the yellow sheets that were identified by Mr. Yeager?

A. That's right.

Q. And the sheets in the file identified by Mr. Salvini?

A. That is correct.

Q. Now, referring to column 1, there are 12 figures in the column; those are what?

A. The figures in that column are the kilowatt hours generated each month, and the total for the year 1942 of the kilowatt hours generated at the Priest Rapids power house.

Q. Now, the second column?

A. The second column is the amount used by the District for their own use, that is, for auxiliary and power house and operators' cottages and miscellaneous small use.

Q. Those figures do show on the daily sheets, Mr. Tinling?

A. Yes.

Q. And what is column 3?

Q. The third column indicates the amount of kilowatt hours used at the Coyote pumping plant

(Testimony of Hugh B. Tinling.)

the various months of the year, and the total for the year, as shown in the compilations and billings introduced by Mr. Salvini. [527]

Mr. Powell: We offer the identification in evidence, if the Court please.

Mr. Ramsey: Standing alone, it is objected to, if the Court please, for the reason that this appears to be a compilation of power data in the hands of counsel covering a number of years, and this compilation covers only a single year. I have no objection to a compilation of that data going in for the benefit of the jury, but I do strenuously object to counsel picking one single year and submitting the power data for that one year alone. If this is to be of benefit here I think that a compilation of the data for the years that we have the information should be made available, not for a single year. It is objected to upon that ground.

Mr. Powell: The reason that we have one year, if your Honor please, is that that is the last full year of the District operation of the plant, and I assumed that would be the year we would take in determining what was used in the plant. Now, we can compile the information for such years as we have data available, but this is the last full year of District operation.

Mr. Ramsey: Well, I want to submit to the Court this, that the flow of water in the Columbia River available, the periods of high water and low water, vary from year to year, and inevitably that must affect the total [528] amount of power de-

(Testimony of Hugh B. Tinling.)

veloped. It might be greater in one year than the average of a number of years. I don't know that the year 1942 was a better year for the production of power by reason of the flow of water in the stream than the other years, but I do think we should have the data covering a period of years in order to get the mean average, the variation from year to year. The Court can very well see that counsel could pick a very advantageous year and compile the data for that year alone, and it would give an untrue picture of the production of the plant over a period of years.

The Court: Well, I think it has value as showing the power production for the last full year prior to the date of taking. It would go to weight rather than the admissibility, and either side can show the time prior to that, if you care to do so. I suppose you will have the witness explain this exhibit?

Mr. Powell: Yes, your Honor.

The Court: The objection will be overruled, the defendant's identification 14 admitted, and the government allowed an exception.

(Whereupon, Defendant's Exhibit No. 14 for identification was admitted in evidence.)

The Court: I might say that the court does not understand your caption "Total available for sale" and [529] opposite that are figures which seem to me to be more than the total output for the year. I just mention that because I thought the jury might not understand it either, because I don't.

(Testimony of Hugh B. Tinling.)

Direct Examination
(Continued)

Q. The two columns on the right, Mr. Tinling, are what?

A. The second column from the right is entitled "Priest Rapids Line, plant, kilowatt hours" and shows the amount of kilowatt hours metered on that Priest Rapids line that goes out of the power plant and supplies power to the pumping plant and also to the Pacific Power and Light at Coyote Junction. The last column shows the Priest Rapids line less the Coyote pumping plant, kilowatt hours used.

The Court: That would be column 3?

A. That is the last column on the right.

The Court: Well, the last column on the right would be the next to the last column minus column 3 on the right?

A. Yes, that is right.

Q. The last two columns are not to be added together, are they?

A. No.

Q. How do you arrive at column 4?

A. Column 4 is taken from the data that is tabulated in Mr. [530] Salvini's exhibit and the power plant exhibits, the operator's daily log sheet exhibits.

Q. Well, I will ask you, Mr. Tinling, if column 4 isn't column 1, the total production, less the plant use?

A. No, column 4 is not the total less the plant use. Column 4 is the—let's see, here—no, that doesn't tie in there; that is data taken directly from

(Testimony of Hugh B. Tinling.)

your records, your daily log sheets, and your data submitted and identified by Mr. Salvini.

Q. What is column 5, then?

A. Column 5 is your net amount that is left over after the District use and the Coyote Pumping Plant use; that is the amount that was available for sale to the Pacific Power and Light Company, plus the addition at the bottom that is shown as Beverly, which is the amount that was also available for sale, but taken off on the other line by Pacific Power and Light.

Q. Then the two items appearing in the lower right hand corner, Mr. Tinling, the first item of eleven million kilowatts plus is before the Coyote use has been taken out, is it not?

A. That is right.

Q. And the last figure, or 8,760,000 kilowatt hours, is what?

A. That is the surplus power that was available for sale.

Q. After—— [531]

A. After the district's use for their station facilities and for pumping, and to that should be added the amount that was taken on a separate line known as the Beverly line, in the amount of 17,481 hours, and the total of the two, or 8,760,685 kilowatt hours, is the number of kilowatt hours that were available for sale by the Priest Rapids Irrigation District.

Mr. Powell: Is that clear, your Honor?

The Court: Yes.

Mr. Powell: That's all.

(Testimony of Hugh B. Tinling.)

Cross-Examination

By Mr. Ramsey:

Q. I notice in column 2, District use; now, just what is that item?

A. Those are the items that are used for station auxiliaries, for lighting the operators' cottages, and heat and light around the power plant and the pumping station.

Q. I notice in column 3, Coyote use?

A. That is the amount that was used for pumping at the Coyote Pumping Plant.

Q. Then that was actually also power used by the District? A. That is right.

Q. So both column 2 and column 3 represents use of power by the District itself?

A. That is correct, one column to identify the amount used for pumping, as compared to the amount used for station [532] auxiliaries and miscellaneous use.

Q. Now then, as I understand the set-up, the power sold by the Priest Rapids Irrigation District to the P. P. & L. Company, with the exception of the small amount diverted on the Beverly line, was delivered at Coyote Junction?

A. That is correct.

Q. And was delivered over the District's own line? A. That is right.

Q. Was there any line loss? A. Yes, sir.

Q. Was that line loss indicated when you say that there is 8,760,685 kilowatt hours available for sale?

(Testimony of Hugh B. Tinling.)

A. Yes, that is the net amount after the line loss has been deducted.

Q. Where was that line loss deducted in this compilation?

A. That shows in the daily log sheets and the exhibits introduced by Mr. Yeager and Mr. Salvini.

Q. Well, I am asking now, where does it show on the compilation?

A. It wouldn't show on the compilation. It would show in the exhibit identified by Mr. Salvini.

Q. I understand that, but we've got a compilation here; we show so much generated; we show a deduction for District use, which you say is electricity used at the plant in the various auxiliaries and I presume in furnishing power [533] to the operators' houses and the operation of a small pump that was there in the plant; then you show a deduction for the electricity metered out for use by the District at the Coyote Pumping Plant, but I don't see any item of deduction for line loss on that total which you say is available for sale on the District lines, to the point of delivery.

A. No, the line loss as a separate item has not been tabulated in this tabulation.

Q. Has there been any deduction made in the amount available for sale, of that line loss?

A. Yes.

Q. Where?

A. In the exhibit identified by Mr. Salvini.

(Testimony of Hugh B. Tinling.)

Q. I'm not talking about the exhibit, I am talking about the compilation. Is there any item for line loss on your compilation?

A. Yes, there is.

Q. Well, show it to us. Where is it?

A. It is not listed on the compilation, but it has been considered and taken into consideration in arriving at the figures in the right hand column.

Q. In the left hand column?

A. No, in the right hand column.

Q. In the right hand column. Well, now, I have made a computation [534] here for January. You show a generation of 917,900 kilowatt hours, a district use of 21,604 kilowatt hours, a use at the Coyote pumping plant of 2372 kilowatt hours, and I have deducted that from the final item in that last column, and I am going to ask you to do the same and show me where there has been any deduction made for line loss there?

A. I did not follow you on your last part there. You said you made your deduction of those two from what?

Q. Of those two items, the District use and the power used at the Coyote pumping plant.

A. And you deducted that from what?

Q. Deducted that from the last column, from the item shown in the last column.

A. Well, you wouldn't—

Q. From the item shown in the next to the last column, and I am unable to see where there has been any further deductions made.

(Testimony of Hugh B. Tinling.)

Mr. Powell: Are you referring to January, 1942?

Mr. Ramsey: Yes.

Mr. Powell: I think I may be of some assistance, if I may, your Honor.

A. (Witness) Take your item Coyote use, your column headed Coyote use for January, and you have an item of 2372 kilowatt hours. [535]

Q. Yes.

A. And that is made up of the item actually used at Coyote of 2156 hours, plus 10 per cent line loss or transmission charge, making the total of 2372. In other words, your loss has been allowed in that figure of 2372, which includes a 10 per cent loss on the amount actually transmitted and used.

Q. Well, now, Mr. Tinling, your item of 893,028 kilowatt hours, being the Priest Rapids line less Coyote, your line loss of 10 per cent should be charged against the total electricity metered on that line, shouldn't it?

A. No; that power is available at the Priest Rapids power plant for sale.

Q. That is true, but it is sold at the end of the line, isn't it, to the P. P. & L.?

A. No, your 895,400 is the amount that was available there, but that is the difference between that and column 3, there, the amount of kilowatt hours that was available for sale by the Priest Rapids Irrigation District at the power house.

Q. But actually it wasn't sold at the power house, was it?

(Testimony of Hugh B. Tinling.)

A. It was sold at the power house, yes, but I think that they had to absorb the line loss to Coyote Junction.

Q. Yes, that is true, so you haven't got any deduction here for line loss, have you? [536]

A. Yes, we have a deduction for line loss of the Coyote use.

Q. Oh, then you're simply charging the District up for line loss.

A. That's right.

Q. But your commercial power you have for sale, you haven't charged any line loss?

A. It is available at the power house.

Q. Is it delivered at the power house?

A. Yes, if they want to take it at the power house.

Q. Is it actually delivered?

A. It is delivered to the bus bar at the power house.

Q. Isn't it a fact that the contract provides that the power shall be delivered at the Coyote Junction, and that there shall be a stipulated line loss?

A. I don't know; I have never seen that contract.

Q. Then you don't know anything about it except the amount of power generated at the plant?

A. I have the amount of power available at the power plant for sale.

Q. Ordinarily does a power company market their power at the power house.

A. Yes, sir, they do.

(Testimony of Hugh B. Tinling.)

Q. Do you know of a single instance where that is done? A. Yes, sir.

Q. Where. [537]

A. Pend Oreille Mines and Metals Company at Metaline Falls; the Montana Power Company at Troy, Montana, is two instances.

Q. Ordinarily doesn't any power company deliver the power over their own lines to the users?

A. Not necessarily; depends on the type of contract, the type of user, and the amount of power available, whether it is wholesale rate or retail.

Q. Well, let me ask you this: Is it a usual procedure for every user of electricity to build a line into the power plant of the generating company in order to get power?

A. Not every user. It is in a good many instances where they're taking power wholesale.

Q. As a business man in this electrical field, is it your position that any potential user of the power generated by the plant would be willing to build its own line into the plant in order to get delivery of power?

A. They would if the rate was low enough, yes.

Q. I suppose so, if they would give it to them. I am asking now under normal business conditions.

A. Yes; in the instance, I just mentioned, the Pend Oreille Mines and Metals, the customer builds his line into the power plant, and pays approximately two and a half times the rate the Priest Rapids would charge you for sale of this power.

Q. Oh, I can very well conceive where a man

(Testimony of Hugh B. Tinling.)

might do almost anything and pay any rate in order to get power, but I am dealing now with this particular set-up. Now, the only purchaser of power from the Priest Rapids was the P. P. & L., wasn't it?

A. So far as I know, yes.

Q. And do you know of any other potential or prospective purchaser of power than the P. P. & L. in that area at the time the government took over?

Mr. Powell: If your Honor please, I don't think this is proper cross examination.

Mr. Ramsey: Well, I do.

Mr. Powell: Well, we're putting in a tabulation, and he's testifying about the figures in that compilation.

The Court: He can answer if he knows. I think the testimony is the amount of power available for sale. I will overrule the objection.

(Whereupon, the reporter read the last previous question.)

A. No, I don't know of any.

Q. And the contract with the Pacific Power and Light provided for delivery of that power at the end of the company's transmission line at Coyote Rapids, didn't it?

A. I don't know, I haven't examined that contract.

Q. You don't know. In any event, this tabulation doesn't [539] make any deduction for line loss on your commercial power, does it?

A. No; this is the kilowatt hours that are available for sale.

Mr. Ramsey: That's all.

The Court: Any further questions of this witness?

Mr. Powell: No, your Honor, that's all.

(Whereupon, there being no further questions, the witness was excused.)

JOSEPH S. PICATTI

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. Will you state your name, please?

A. Joseph S. Picatti.

Q. Can you hear me all right, Mr. Picatti?

A. Yes, I can hear you.

Q. And you want to be sure and speak loud enough so the jury can all hear you.

A. I'll do that.

Q. Where do you live, Mr. Picatti?

A. In Yakima.

Q. What business are you engaged in?

A. In the electrical machinery and contracting.

Q. Where. A. 105 South Third, Yakima.

Q. How long have you been in Yakima?

A. Since 1928.

Q. Where did you live before you came to Yakima? A. Hanford.

Q. How long did you live in Hanford?

A. Since 1908, with the exception about four years between '18 and '23.

(Testimony of Joseph S. Picatti.)

Q. And what did you do at Hanford?

A. Well, I started from bull cook in a hotel, and got up to assistant manager of the company.

Q. And what company?

A. Hanford Irrigation Power Company, Black Rock Power & Irrigation Company, Consumers' Ditch Company, and Agathon Land Company.

Q. Did you at any time operate the Priest Rapids power plant? A. Yes, sir.

Q. When?

A. Well, I've operated as a cub operator, about 3 months, in 1909, and then I operated occasionally, now and then, and in 1912 I operated a whole year; I've operated at Coyote some, and then I was in charge of the equipment while it was in the hands of the receiver, Marvin Chase, and that time I was in charge of the whole equipment, and from 1924-'25 up to '27 I was also rather in charge of the lines and so forth. While I was bookkeeping I was in charge [541] of construction work for the company, while I was working for the Hanford in the office.

Q. Did you ever do any work of replacing or repairing any of the large equipment there in the power house? A. Yes, sir.

Q. When?

A. That was done when we took the contract to furnish the turbine on number 2 generator.

Q. Then you're the one who put in the new turbine on the number 2 generator? A. Yes, sir.

Q. What kind of wheel was taken out?

A. The old Francis type wheel.

(Testimony of Joseph S. Picatti.)

Q. And what kind did you put in?

A. Propeller type.

Q. Where was this work done in the plant?

A. Down in the pit, down in the turbine chamber.

Q. And what did you—do you recall how long it took?

A. Beg pardon?

Q. Do you recall how long it took? To do the work?

A. Well, we started the work as soon as we got the contract, along about September or October, and then we got done just in time before the water came up, along about May.

Q. And how did you get the machinery into the pit?

A. They de-watered the canal and removed the grates and put [542] it in through the head gates of the power house.

Q. Did you have to change the draft tube?

A. Yes, sir.

Q. And what is the draft tube?

A. Well, the draft tube is where the water goes out from the turbine.

Q. Through the turbine and out of the power house?

A. Out in the tail race, yes.

Q. And was that a good wheel that put in there?

A. Well, we would naturally expect to—yes, it was a new wheel.

Q. It was a new wheel?

A. Yes.

Q. What kind of a wheel was it?

A. Propeller type.

(Testimony of Joseph S. Picatti.)

Q. Who manufactured it?

A. Allis Chalmers Manufacturing Company, Milwaukee.

Q. During the time you were putting in the wheel did you have occasion to observe what kind of concrete was in the power house?

A. I sure did.

Q. How did you find it out?

A. Because we had to do a lot of chipping in there. We put in 344 shots in that building, blasted around, and towards the last we were able to chip off four or five [543] inches of concrete from the walls, and we never cracked one of the walls. Of course, we just put in little shots, in order to make room for the new wheel.

Q. And can you state, Mr. Picatti, whether the concrete was good or bad concrete?

A. The hardest one we ever found in my contracting work, yes.

Q. And were there any cracks or defects in the concrete building?

A. No, not to my knowledge. I wish there had been, at that time.

Mr. Powell: I think that's all.

Mr. Ramsey: No questions, that's all.

The Court: That's all, then, Mr. Picatti.

(Whereupon, there being no further questions, the witness was excused.)

The Court: The court will recess until 1:30.

(Whereupon, the Court took a recess in this cause until 1:30 o'clock p.m.)

Yakima, Washington, February 13, 1947,

1:30 o'Clock P.M.

(All parties present as before, and the trial was resumed.)

J. C. STEVENS

called as a witness on behalf of the defendant, being first duly sworn, testified as follows [544]

Direct Examination

By Mr. Powell:

Q. Your name is J. C. Stevens?

A. Yes, sir.

Q. Where do you live, Mr. Stevens?

A. Portland.

Q. What business are you engaged in?

A. Engineering; civil engineering.

Q. Are you a professional engineer?

A. Yes, sir, licensed in Oregon and Washington, Idaho, Montana.

Q. Where did you take your engineering work?

A. I am a graduate of University of Nebraska. I have a degree there of Bachelor of Science in Civil Engineering, and later a degree of Civil Engineer, in 1928, and I have a degree of Doctor of Engineering from the Oregon State College.

Q. Have you occupied any public positions as engineer?

A. Yes. I was assistant state engineer of Nebraska in the early days of the Reclamation work, and then I was assistant engineer in the Reclamation Service, it was called then, now called the

(Testimony of J. C. Stevens.)

Bureau of Reclamation. I was secretary of the State Conservation Commission, I mean a member of the State Conservation Commission, in Oregon; secretary of a super-power survey committee that made a study of power in the Pacific Northwest.

Q. And what has been your experience with irrigation and irrigation districts?

A. Well, I've—I was also assistant, I mean the District Engineer in the Pacific Northwest for the Reclamation Service in 1906, '07, '08, up to 1910. In that work I had charge of investigation for all of the water supply problems, 'most all of them, for the Bureau of Reclamation in this northwest, including a study of the accounting for the water system, for the water taken in and distributed, delivered, loss in seepage, and so on, a regular accounting system for all the water taken into the Sunnyside Canal, in 1908, I think, and 1909. I think that system has been expanded now to the other reclamation projects in this territory. Then I was over in Spain for two years and a half, primarily on hydroelectric development, but also on study of irrigation projects there, and on return here I designed and constructed the Oroville-Tonasket Irrigation Project up in Okanogan County in 1915 and '16. I've had—oh, I've been in close touch with irrigation throughout this northwest, studied duty of water, written considerably about it in technical papers.

Q. Did you have any connection during this time, or make any studies in connection with the properties around White Bluffs and Hanford?

(Testimony of J. C. Stevens.)

A. Yes, I did. I resigned from the government service in 1910, and one of the first engagements I had was a study of the possible future development, and the program of development, for this irrigation project later taken over by the Priest Rapids Irrigation District.

Q. When was that? A. That was in 1911.

Q. With whom did you work?

A. With Mr. D. C. Henny. Mr. Henny was supervising engineer when he first came here about 1905 for all of the reclamation work, and then he left the government service and opened up an office for private practice, and I was him in some private projects. In this particular one we served in the capacity of partners on that project. He's deceased now.

Q. And there were reports made?

A. There were reports made for the future development of the country, of that area, studies and reports for distribution system, and improvement of the pumping facilities.

Q. By whom were you employed in making that study?

A. Pacific Power and Light Company.

Q. Did you have—have you had any connection with the design or construction of power plant properties? A. Yes.

Q. With the Lewis River? [547]

A. Yes, I made reports and studies on proposed developments on the Lewis River, and on the Deschutes River in Oregon. As I say, I was in

(Testimony of J. C. Stevens.)

Spain from 1912 to '14, largely on hydro-electric development, and it culminated in the construction of two projects for which I served as chief engineer.

Q. And what was the total power output of those projects?

A. One was a small one the Gerri plant, designed first for power to be used during the construction program, but it was later included in the general plan of development. The other was the Seros project, taking water from the Segre River. That was a development of about 80,000 horsepower, and included transmission lines.

Q. Have you ever done any work for the Montana Power Company?

A. Yes, I have made a study in 1918 and 1919 of the ice problems which they had in connection with their projects or plants on the Madison and Missouri Rivers, then the next work I did was for the evaluation of the power sites which the Montana Power Company had along the Missouri River.

Q. About how many were there?

A. Oh, seven, I think.

Q. And were you—were there any other hydro-electric developments?

A. Yes. I designed, I charted the design and the supervision [548] of construction of the Leaburg plant for the city of Eugene, a municipally owned system, and later had charge of the design and construction of a steam plant for them to serve as an auxiliary for their power system. Then we made studies for the reconstruction of their early

(Testimony of J. C. Stevens.)

plant, known as the Walterville plant. They have some old Pelton wheels in there; they're planning to replace them with new units. We have already constructed the spillway for that project. The rest of the work undoubtedly will go ahead when they can get the equipment necessary.

Q. Have you ever written any articles on hydro-electric development, or power?

A. Yes, I have, quite a little. I wrote the chapter in Calvin Davis' handbooks on hydraulics. It is rather a large volume, and I wrote the newest edition, the chapter on hydraulics.

Q. Does that handbook have very wide distribution?

A. I think so, yes.

Q. Are you a member of any electrical engineering society?

A. American Institute of Electrical Engineers, American Society of Civil Engineers.

Q. Occupy any offices?

A. I served as director and later president of that society, in 1945. I am also a member of the American Institute of Consulting Engineers, and the Professional Engineers of [549] Oregon. I was the first president of that organization.

Q. What is the name of your firm, Mr. Stevens?

A. Stevens and Koon.

Q. With offices where?

A. Offices in the Spalding Building, Portland.

Q. Are you a partner in any other firm?

A. Yes, I am a partner in a manufacturing firm, of the name of Leupold and Stevens Instruments.

(Testimony of J. C. Stevens.)

Q. What kind of instruments?

A. Well, we manufacture engineering instruments of any kind, surveying instruments, water level recorders, rifle scopes, navigation instruments, and radio recording instruments for water levels and flow meters.

Q. For what?

A. Water level recorders by radio, and flow meters; quite a long list of instruments. We have about 65 employees there.

Q. And when you say flow instruments, what kind of instruments are they?

A. Well, those would be instruments for measuring the flow in Venturi tubes or orifices or pipe lines.

Q. Did you say Venturi tubes?

A. Yes, V-e-n-t-u-r-i; it is a tube that has a constriction and then an expansion. The increase of velocity in that construction is a measure of flow. We also make instruments [549A] that record the flow in nearly any type of measuring device.

Q. We notice on defendant's Exhibit 10 the reference is to a Stevens continuous recorder.

A. That is one of our manufacture, yes.

Q. Used by the United States Geological Survey?

A. Yes, they have a large number over the country. They're using them very extensively.

Q. And what does it measure?

A. Well, it measures the height of water, records—makes a graphic record of the rise and fall of the water surface, and the engineer of the Geological

(Testimony of J. C. Stevens.)

Survey makes discharge measurements of the river at different stages and developes what he calls a rating curve, that is, a calibration curve, so that he can determine the flow for any given height of water, and he takes the average daily height from this graph, from this recording chart, and in that manner tabulates the flow that appears on those sheets, and they're also published every year by the Geological Survey in water supply and irrigation papers.

Q. Have you previously been a witness, Mr. Stevens, in cases involving evaluation of hydro-electric plants? A. Yes, I have.

Q. And of sites for hydro-electric plants?

A. Yes, I was a witness for the city of Centralia in the [550] acquisition of some of their lands for hydro-electric purposes. I have done quite a lot of work for the Washington Power Company in connection with their lands along the Coeur d'Alene River, and I have made valuations for quite a number of projects in which some element of power is involved; for example, the city of Hood River, there is some power involved there. I made evaluation of water system for the city of Yakima, city of Salem, Boise, Idaho, Dallas, Oregon, and various other places, and I mentioned a moment ago the power work for the Montana Power Company.

Q. Were there valuation cases involved there?

A. It involved the valuation of power sites, and in arriving at that I set up a series of substituting steam plants for the power, for the hydro-electric

(Testimony of J. C. Stevens.)

plants, as some measure of index of the value of those power sites. That was one way of getting one element in the valuation.

Q. And what about the Southerland Irrigation District?

A. Southerland Irrigation District was a valuation of some old property that a bank had some bonds on, that included the pipe lines and the flumes; no power involved there, however, it was irrigation.

Q. No power involved? A. Irrigation.

Q. Mr. Stevens, when was your first connection, or when was [551] the first time that you examined the properties around White Bluffs and Hanford?

A. 1911.

Q. How long did you spend there, how much time?

A. Oh, we worked on that project for nearly a year, I think.

Q. How much of the time were you there personally?

A. Well, I was there, oh, several weeks at a time, or a week at a time, many different times. We had survey parties in the field, and land classification crews in the field, and we run out extensions of the irrigation system, and laid out a distribution system. I wouldn't know how much time, but quite a substantial portion of all the work was done by parties working under my direction.

Q. Did you at that time go up to the power house?

(Testimony of J. C. Stevens.)

A. Oh, yes, I examined the power house and the facilities there, and also the Coyote Pumping Plant.

Q. And you have been up there since?

A. Yes, I was there.

Q. Was the canal located in 1911 where it is now located, that is, the irrigation canal?

A. Just about, yes, unless there's been some breaks and they have made some minor changes; at least as far as I can tell. I was there in September of this last year, 1946, and again in January of 1947.

Q. You mentioned the pumping plant. Was the building that [552] housed the pumping plant in the same location then as it is now?

A. Same building that is there now, yes, sir.

Q. Did you make any tests as to the output of the plant, the pumping plant, at that time, I mean?

A. No, we did not. Well, I say we did not; we made some measurements in the canal showing the flow and what the pumps were producing. At that time the two first units, the two Allis Chalmers motors and pumps that were installed in either end of the pump station, they were inadequate for the service. They were designed to deliver, I think the rating was $62\frac{1}{2}$ cubic feet per second, or second feet, a further term, under 37 foot head, but the head at this plant varies with the stage of the river between 40 and 65 feet, and it was very difficult to get any water up there into that canal at all at the normal speed of the pumps, so the expedient was adopted of speeding up the generators at the Priest

(Testimony of J. C. Stevens.)

Rapids Power Plant. The normal speed was 150 revolutions per minute, and I think they speeded up to 180 revolutions per minute, and that enabled them to pump water up into the canal. Of course, they couldn't continue to do that because that gave them an unsalable power if they wanted to sell any portion of that, so the expedient was later adopted of connecting those two old pumps in series. By that I mean [553] that a 30 inch pipe line was laid in the building to connect the discharge of one pump with the suction side of the other, then when both ran together they would have the capacity of one unit under twice the head, roughly, and then later the third unit that is there now, it was not in 1911, it's been added since.

Q. I see; so, Mr. Stevens, when you say these pumps are connected in series, they were connected—the intake from the river came into only one of the pumps.

A. That is right.

Q. You're describing the conditions that were there in 1911?

A. No, in 1911 they had two separate pumps that were not connected together, and each of them had their own suction from this tunnel, and they were connected later at some time. I don't know when that was done, but very shortly after 1911. Our studies for the canal and pumping plant station was to find out very definitely what each of those units would do by itself, and how they could be speeded up, and the water that we could divert from them after they were speeded up.

(Testimony of J. C. Stevens.)

Q. Now, did you examine the inside of the pumping station the last time you were there?

A. Yes, that was in January, oh, the 29th or 30th of January, 1947.

Q. About three weeks ago? [554]

A. Yes, something like that.

Q. And were you there in September?

A. I did not go to the Coyote Pumping Station in September, but I did go to the power plant. We had a little car trouble and we didn't have time to get to the Coyote Station. We had planned to do so, but darkness fell before we could make it.

Q. Now, would you just describe in general terms, Mr. Stevens, the condition that you found when you examined the pumping plant last month?

A. Well, the building was locked, of course, and the generators were covered up with canvas.

Q. Do you mean the generators?

A. I mean the pumps. The motors, there's two large induction motors, and two of these pumps, the original pumps. The motors were rated, I think, at 450 horsepower, and the pumps were rated for 62½ cubic feet per second under 37 foot head, each of them, but being connected in series, of course they can pump under twice that head the quantity that one pump would otherwise pump. The switch board was there intact. The crane was there. I examined the building. It was in very excellent shape. The substation transformer building was there, and the two 4-pole structures, one over the substation and another one up on the hill. The pipe line there had

(Testimony of J. C. Stevens.)

been changed [555] from the original pipe, which was a single 72 inch wood stave pipe. They have been converted now to two 42 inch cement culvert pipes, bell and spigot culvert pipes; at least it looked so from the inside, and the canal had been divided so that there was two entrances into the canal. Concrete structures have been constructed there; that's since I knew it in 1911. The third pump, which I had never seen before, is a—was a variable speed pump, had a capacity rated at 2800 gallons per minute, I think, under a 60 foot head, but it had controllers on the switch board so that the speed could be varied somewhat to pump more efficiently at the variable heads that would occur there, and on the discharge sides of all three pumps was a large hydraulic operated gate valve, 30 inch. There was a pump there for supplying water, I presume, for supplying water for domestic supply, and also pumping into a tank up on the hill that I took to be a reservoir for the insured operation of these hydraulic valves, and then there were two-way valves in the piping. You see, the hydraulic valve consists of the ordinary gate valve that is connected to a piston and a cylinder, and then they have pipes connecting the upper end of the cylinder and the lower end of the cylinder, and they're connected to the water system through a two-way valve, so if they want to lower the valve they turn this valve in one direction; [556] that lets the water in from the upper side, and out from the lower side of the piston. If they want to raise

(Testimony of J. C. Stevens.)

it they turn it the other way, and reverse it, and that makes the valve rise. Those are used just to save labor and long hand turning of the valves. There was an oil system there for the bearings, that is, the piping was there. This pump that I speak of was gone. It was not there. The place for its location was there. The oil pumps were gone, had been taken away, but their location was still there. The building I examined as far as I was able to examine it, and I went all around it; it was in very excellent condition. The concrete was in good shape.

Q. You were not there in 1943, were you?

A. I was not, no.

Q. Have you examined the inventory list made by Mr. Tinling and introduced in evidence as Exhibit 9?

A. Yes, sir.

Q. And you heard his testimony describing the articles, describing the equipment?

A. Yes, sir.

Q. Now, there were transformers in the substation there at the pumping station?

A. Yes, three transformers at the substation.

Q. You've given us a general description of the power plant, have you not? [557]

A. Of the pumping station.

Q. Of the pumping station, I mean.

A. Yes, except that I did not mention the transmission line that runs about a mile and a half to the southward and there joins with a transmission line from the Priest Rapids Power plant that ex-

(Testimony of J. C. Stevens.)

tends on eastward from that point, or it did. Part of that line had been robbed of the insulators, and the line was not in service.

Q. Now, did you see the transmission line that extended from the pumping plant up to the power plant?

A. Yes, we followed it along the road. You could see it from the road.

Q. And from the amount that was still there did it correspond with the inventory given by Mr. Tinling.

A. I should say so, yes.

Q. You did not make an inventory of the poles?

A. I did not. I had the inventory with me, and I just made a spot check.

Q. Did the inventory appear to be correct to you?

A. Yes, sir, it did.

Q. And did you check the inventory at the pumping station?

A. Yes, in general terms I did, what we call a spot check; looked at the larger, more important items, and verified them.

Q. Some of the things on the inventory were not then in the [558] pumping station, were they?

A. The inventory included the whole power plant, electrical equipment for the power plant, and the transmission line, two substations, and the pumping equipment.

Q. There is some of the equipment that appears on Mr. Tinling's inventory, Exhibit 9, that was not in the pumping plant when you were there in January of this year?

(Testimony of J. C. Stevens.)

A. Oh, yes, that's right, here were some pumps and motors and I don't know what all were out. Places you could see they had been taken away; the foundations and supports were still there, and the pipe connections were still there, hanging in the air.

Q. You heard his testimony concerning the transmission line, and from your checking that you did did it appear to be as described by him?

A. Yes.

Q. That is, the part that you could check?

A. Yes. As I say, they had been robbed of some of the parts, some of the insulators, some of the wire, was gone.

Q. By that you don't mean anybody committed larceny?

A. What I mean is, I assumed that the Army Engineers had taken it for service elsewhere, same as the pumps they had taken out of the Coyote Station and other facilities, put them some place else.

Q. Now, at the power plant, did you make a similar check of [559] the inventory?

A. Yes, I did.

Q. Did you examine the power plant in September of 1946? A. I did.

Q. And how did you examine it?

A. Well, I went up there by automobile, through the Hanford area. I was met there by Mr. Hall, who came over in his 'plane, and together we went over the power canal and the power house, the pumping station; he explained the work that

(Testimony of J. C. Stevens.)

had been done in '38 and '40, and all other features concerning the pump station. I read the gauges and examined all the important portions of the equipment, the generator, governors, pumps, and the substation.

Q. And did you subsequently make a check of the property there?

A. I went here again in January, I think it was January 30 or 31, I've forgotten the exact date.

Q. Did you at that time have a copy of the list that's been introduced as Exhibit 9, the Tinling list?

A. Well, I had a typewritten copy that had, I think, 'most everything that this list had. There might have been some additions to this exhibit that I did not know about. I didn't compare them with this exhibit.

Q. You did not compare them with this exhibit?

A. No. [560]

Q. But you did have a list?

A. I had a list, and I made a list of my own, of the important pieces.

Q. Have you since compared that list with the Exhibit 9?

A. Yes, in a general way. I haven't in minute detail.

Q. And did your checking of the property there at the power plant in January substantially correspond with the inventory that is introduced?

A. Yes, except for some rather minor things; some of the serial numbers on some of the units

(Testimony of J. C. Stevens.)

were not what he had on his list. There was one irrigation pumping set, pump and motor, that was not included on his list. In general, however, his list was in general conformity with what I saw there.

Q. Now, did you at any time look at the power canal? A. Power canal?

Q. Yes. A. Yes.

Q. When?

A. Well, in September, 1946. I did not go up to the power canal in January, '47; of course we could see it from the power station, such portion of it as was visible from there we could see it, and did examine the lower end of it with some ideas there of putting in some guards, possibly, for sluicing the sand out. [561]

Q. Now, would you just describe the power house in general terms to the jury?

A. Well, the power house is a concrete structure, very well built. Aside from the building that's there, there is an extension to the southward that was intended, undoubtedly, for an increased dimension of the power house, that is, for an addition to be put on to the power house. In 1911 when I was there the plans that I did see provided for six generators there, but they never put in but two, and this extension of the power house was undoubtedly intended to cover that extension. Part of the retaining walls and up to the elevation of the generator floor was the skeleton work of a new addition to that building. Well, the power house is right

(Testimony of J. C. Stevens.)

across the end of the canal. The north and south direction of it is parallel with the river bank. The intake to the water wheels is through some racks there, and there are two units in the plant. One is the old original unit that was installed, it was there in 1911, I understand it was installed along about 1906 or '07, and was running when I was there in September. This unit has a generator and a turbine with three water wheels to it. The purpose of those three was that on account of certain variations in the head due to the flow in the river, that these three turbines would maintain the speed of the unit up to that required for [562] commercial power.

The other, the second unit, is a General Electric unit, a new one, with a propeller type of wheel, and with its governor, a Woodward governor. There is also a small turbine that operates a direct current generator for excitation purposes, and there is also a motor generator set for excitation, that is, there is a direct current motor—I mean, an alternating current motor, induction motor, and coupled to the same shaft is a direct current generator. That, I believe, is used as an emergency service for exciting the field of both the generators.

Then there is the switch board with all of its rather intricate instruments and paraphernalia, some seven panels, I think; and then there is down on the second floor, the lower basement floor, there is an extension extending on the river side that houses the transformers and the circuit breakers.

(Testimony of J. C. Stevens.)

The water that leaves the water wheels goes out into draft tubes molded in the concrete; and below the draft tubes are some remnants of some old gates that were used with some operating mechanism there that I think are entirely unused at the present time. Their purpose, I think, was to seal off the water from coming into the unit in case it was necessary to examine the wheel, or make any repairs to it, and the river was high enough to get into the unit. [563]

Now, then, there are also gates at the head, in the canal, in the penstocks that go into these two units, four of them.

Q. Did you say in the forebay?

A. In the fore-bay, that is in the canal, yes. The fore-bay is usually considered the water just ahead of the penstocks in the canal. Of course, it was at the end of the canal, the fore-bay.

Q. The gates were there?

A. The gates were there, yes, you can see the mechanism for operating them. Now, in addition to that there are three cottages for operators, with wires going over to them, transformers, there is the pump for irrigation service, that is, there is an eight inch pump with a 50 horsepower motor on it, used for, I presume, irrigation of some of the gardens and probably some of the land up there, for irrigation, I am so informed, and then there's a couple of pumps there, I think, for domestic water supply, used for the cottages.

(Testimony of J. C. Stevens.)

Q. Mr. Stevens, you described or mentioned an exciter. Where was that located in the power house?

A. Well, it is in between the two units, now, a little bit to the west, I should say, of the center line of those units.

Q. And does it look like a little generator? [564]

A. Well, yes, it looks like a small generator, it is a small generator, and the turbine is down below.

Q. And it is operated on a small scale the same as the large ones on a large scale?

A. Exactly, except this is direct current. In order to excite these magnetic coils on those generators, you have to use direct current for that, and this produced direct current. Alternating current, the voltage rises to a maximum, then passes through zero and to a negative value, so that you get a variable voltage throughout each cycle. Direct current is like the current from a battery; it is continuous at all times.

Q. And that is necessary?

A. It is necessary for the exciters, yes. All the exciters have to be of that character.

Q. Does the exciter produce this electrical energy, the direct current?

A. Well, it aids in producing it, because it supplies the magnetic field through which the coils of the generator have to cut in order to produce the commercial alternating current. It is an indirect aid; it doesn't produce the power for sale at all, I mean for use.

(Testimony of J. C. Stevens.)

Q. Now, what about the—how was this turbine driven, the exciter?

A. Well, there is a little water wheel turbine down on a [565] long shaft, down below.

Q. Is there a gate in the fore-bay through which the water goes to the turbine on this exciter?

A. Yes.

Q. And where was that located in the fore-bay?

A. Well, that would be in the fore-bay, that is, in the upper side of the power house, the upper end of the penstock. I might say, then, the second unit as I described is a General Electric unit, General Electric generator with a propellor type of wheel, which is a wheel shaped something like the fins of a wind-mill, you might say, different from the ordinary Francis type of wheel, and both units were running when I was there in September, but only this General Electric unit was running when I was there in January.

Q. Can you give us the kind and capacity of these two generators, Mr. Stevens?

A. The rated capacity of the old generator—I've forgotten whether they call that number 1 or number 2——

Q. That is number 1.

A. Number 1, I think it is the old Allis Chalmers generator with the triple turbine water wheel there.

Q. What is the name of that type of water wheel?

A. Well, that is a Francis wheel, taken from the name of the early inventor 'way back in the 60's

(Testimony of J. C. Stevens.)

sometime, I've [566] forgotten just when it was, James B. Francis. In entering that type of turbine the water enters through the shaft and then is turned to a direction following, that is, in the direction the water goes out peripherally from the direction of rotation of the machine. The blades are rather long, and they're all curved out in that direction, so as the water enters them, it is thrown backwards trailing the direction of the flow. The propellor type turbine is more on the nature of a fin on a windmill.

Q. Or the screw on a ship.

A. Yes, or the screw on a ship, yes. It has considerably higher speed, that is, you can get higher speed out of that type of unit under low heads than you would with a Francis type. Did I cover your question?

A. Yes. Mr. Stevens, have you made cost studies of the various items that comprise the power system and the irrigation system in the District?

A. Yes, sir.

Q. And that is the properties that are involved here?

A. Yes.

Q. Have you also from your examination formed an opinion as to the depreciation of these various items?

A. Yes, sir.

Q. And you have had information as to the power production, [567] have you, of the power plant for the last year of District operation?

A. 1942, yes.

(Testimony of J. C. Stevens.)

Q. And did you examine the power canal?

A. Yes.

Q. And have you seen the information or data concerning the flow of the river at or near Priest Rapids?

A. You mean at Trinidad?

Q. Yes.

A. I've seen the records. I haven't examined them in detail.

Q. Do you know approximately, Mr. Stevens, how much water is required to operate the two units in the power plant at capacity?

A. I don't know the exact quantity.

Q. Do you know whether or not there is sufficient water in the river to do it?

A. Not at this time.

Q. Pardon?

A. Not when the river's low, not when the Columbia River's low.

Q. Why?

A. Well, they can't get enough water into the canal to operate both units.

Q. Well, is there enough water in the river?

A. Oh, plenty. Minimum flow there I think, of all time [568] record, is about 21,000 cubic feet per second, and this is a matter of 1000, more or less, required for this unit.

Q. You say about 2200?

A. I say, the flow in the Columbia River, minimum, I think the minimum flow for all years of record is about 21,000 cubic feet per second, and the flow required for this is a matter of a couple of thousand or less.

(Testimony of J. C. Stevens.)

Q. A couple of thousand second feet?

A. That's right.

Q. So it would be about one-tenth of the lowest recorded flow of water in the Columbia?

A. That's right.

Q. At what point?

A. At this point. Of course, it was not recorded at this point, but the record at Trinidad, there is almost no intervening—I should say that the flow at this point is virtually the same as that at Trinidad, and I think 21,000 minimum is the minimum given by the Army Engineers in their report on this large Priest Rapids development.

Q. How is that report generally referred to?

A. Well, it is called the "308" report. It was the report that authorized the Army Engineers all over the country, I think the resolution was number 308, joint resolution of Congress, if I remember rightly, and the work that [569] they did in those years took that name, 308 studies and 308 reports, done by the Army Engineers in every district in the United States. It was an inventory or appraisal of the water resources of the country with respect to power and flood control and irrigation and other purposes, and on the Columbia River they made exhaustive studies both in the Portland District Office and Seattle District Office, and outlined quite a large number of projects, including this large development at Priest Rapids. They outlined two projects there, one what they called a low dam, and

(Testimony of J. C. Stevens.)

the other a high dam. The low dam I think would back water up to Vantage, and the high dam clear up to Rock Island.

Mr. Ramsey: I object to going into the matter of proposed dams at this site that have never been carried through. I can't see where it has anything to do with this particular case.

The Court: Well, he's already answered the last question. Let's have another one, and then we can decide what to do in the future.

Direct Examination
(Continued)

Q. Have you ever acted as a consultant with the Army Engineers? A. Yes.

Q. Did you do any work on the 308 report?

A. Not on the Columbia River. I did some of the work on the Willamette Basin. I am now on the consulting board for the Army Engineers for the Portland District, which begins at the mouth of the Snake River and extends down to the mouth of the Columbia.

Q. Did you prepare, Mr. Stevens, a statement of or inventory of the property, with the aid of Mr. Tinling's list, Exhibit 9?

A. Yes, and some of the quantities that are in Mr. Hall's report.

Q. And some of the quantities in Mr. Hall's report? A. Yes.

Q. And those were figures testified to yesterday or today by Mr. Hall and Mr. Tinling, were they?

A. Yes, sir.

(Testimony of J. C. Stevens.)

Q. Have you checked the prices yourself on a number of items?

A. I did not check—on a number of items, yes, I have, on the major items I have, but I have not used the prices; I've used my own prices.

Q. You've used your own prices?

A. Yes, for those major items.

Q. Have you also prepared a statement of your opinion of the depreciated value of these properties?

A. I have.

Mr. Powell: May this be marked, your Honor?

(Whereupon, cost of reproduction less depreciation, by J. C. Stevens, was marked Defendant's Exhibit No. 15 for identification).

Direct Examination

(Continued)

Q. I notice your name does not appear on it, Mr. Stevens. This is, however, prepared by you?

A. Yes, it is.

Q. Mr. Stevens, I hand you Defendant's Identification 15, and will ask you if you know what it is?

A. This is a photostatic copy of the reproduction cost less depreciation which I have prepared of the power plant, the pumping plant, and the irrigation system.

Q. And how many sheets does it contain?

A. It contains three sheets. After the reproduction cost and reproduction cost less depreciation for the entire project was prepared, I made a segregation of the reproduction cost less depreciation

(Testimony of J. C. Stevens.)

between the power plant and the irrigation system, and that is on the third sheet.

Q. That is, you were advised about the necessity of so dividing it after you arrived here?

A. Yes.

Q. When was this prepared, Mr. Stevens?

A. This was prepared in Portland just before I came up here on the 10th, I think, or 11th, shortly before then. [572]

Q. Are the figures that are contained on the typewritten sheet, which is sheet 3, all contained within the first two sheets, the photostatic sheets?

A. They are.

Q. And why have you prepared sheet 3?

A. Just to show the segregation of the power plant from the irrigation system and pumping plant.

Q. You have included in the irrigation system what items, Mr. Stevens?

A. Included the lands and rights of way and the transmission line from Coyote to Coyote Junction, the Coyote Pumping Plant and substation, all of the facilities there for pumping, the canals and distribution system, interest during construction, and overhead items on each one of those items.

Q. And is the balance of the property included in the power?

A. And the remainder of it is included in the power plant facilities.

Q. Now, Mr. Stevens, have you made any determination as to—or have you divided any part of

(Testimony of J. C. Stevens.)

the power plant value or allocated any portion of it to the irrigation system?

A. No, I have not.

Q. That does not appear in those sheets?

A. It does not appear in this.

Q. Would you mind looking, then, at page 1 of defendant's [573] identification 15? What are the three columns on the right hand side?

A. One is the reproduction cost new as of 1943. The next column is the condition in per cent, that is, it is the condition obtained from my examination of the property.

Q. Who determined it?

A. I did, by an examination of the equipment and property.

Q. What is the third column?

A. The third column is the reproduction cost less the depreciation. Depreciation would be represented by multiplying the reproduction cost new by the condition in per cent.

Q. I see; or, if the middle column of the three showed 50, that would mean that in your opinion that certain articles had depreciated 50 per cent?

A. That is right.

Q. And if the column shows 40, what will that mean?

A. It would show that the condition of the plant was 40 per cent of a new plant or a new unit. Some elements are not depreciated at all, and some of them have depreciation all the way from 30 per cent on up.

(Testimony of J. C. Stevens.)

Q. What I have reference to, Mr. Stevens, is that the percentage that is shown in the column does not represent the amount that has been taken off, but the amount that remains? [574]

A. The amount that remains, that is right.

Q. And the difference between the percentage shown and 100 is the amount of depreciation?

A. That would be the amount of depreciation that the particular element had sustained in excess of normal maintenance. I used the term "depreciation" broadly; it may mean obsolescence, or loss of utilitarian value.

Q. There are various kinds of methods of figuring depreciation, are there not? A. Yes.

Q. How have you figured your depreciation?

A. Well, this would be what we call a "straight line" basis.

Q. And what is that?

A. Well, it isn't even—it is just—depreciation is a matter of physical fact, not an accounting procedure or expedient at all. It is a physical fact, and the condition of the property can be determined by examination of it, and this condition as set up here shows the value still remaining in the property in excess of what might have been added to it from time to time by just normal maintenance. Now, I haven't used, really, a straight line depreciation at all. Straight line depreciation is based, usually you estimate the life of the property and you find out how many years old it is, and you make a proportion of its life, that is, its used period with its [575]

(Testimony of J. C. Stevens.)

estimated life, but this is a little bit different. It avoids that expediency by simply setting down the condition of the property which you determine by your own examination of the property, and then multiplying your reproduction cost new by that per cent, to obtain the amount remaining, the value of the property.

Q. Now, since you did not see the property in 1943, have you compared the inventory prepared by Mr. Tinling and by Mr. Hall with the inventory as shown on identification 15?

A. Yes. Well, this is made up from the quantities that were in those two reports.

Q. And that is, by two reports you mean Exhibits 9 and 11?

A. I think so, in general. You see, I did not have Exhibits 9 and 11 in my office, but I had what purported—I had the inventory that Mr. Tinling had made, and also the material inventory that Mr. Hall has made. Now, whether the quantities which I had are identical with those, there might be some slight variation, but nothing of any consequence.

Q. When I say Exhibits 9 and 11, Mr. Stevens, I refer to the exhibits which I am now showing to you.

A. One is by Hall, and the other by Tinling.

Q. Yes.

A. Yes, I think this is in substantial agreement with those.

Mr. Powell: At this time, your Honor, we offer Defendant's Identification 15 in evidence.

(Testimony of J. C. Stevens.)

Mr. Ramsey: Objected to, if the Court please, for the reason it appears that the testimony of the witness as to values is in part based upon acceptance by him of estimates of other witnesses as to amounts, and that is particularly true of excavations and the materials used in the structures. In other words, it does not represent his own opinion, but it represents his opinion based upon the opinion of other persons as to a portion of the items taken into consideration in arriving at the total.

The Court: The jury may retire now for the afternoon recess.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Cheadle: Could we have the objection read back?

(Whereupon, the reporter read Mr. Ramsey's last previous objection.)

The Court: It is the court's view that one witness make take an inventory, testify to it, and have it identified in court here, and then another witness place values on the property based on that inventory. That is what's been done here, as I understand it, and that is [577] the practice that I have followed, and I understand other judges have too, in these P.U.D. cases. Am I correct here in my interpretation of this witness' testimony, that the valuations are his own; I say, in valuations, his opinion or estimate of the reproduction cost new is

(Testimony of J. C. Stevens.)

his own estimate, or is it based in part upon the valuation placed on the property by Mr. Hall and Mr. Tinling?

Mr. Powell: I understand that the estimates of reproduction cost new are his own; that he has made a study himself of those. Is that correct, Mr. Stevens?

Witness: It is correct as to all the major items.

Now, I take a view of the electrical items, take the switch board, for example, a very intricate thing, and I did not undertake to do more than spot check his estimate, and I took his value, that is, reproduction cost, as mine, but I depreciate, which he did not do.

The Court: Well, there are two things involved here. One is the reproduction cost new upon this property. The other is the depreciation that should be put upon that reproduction cost new. They're two separate and distinct things. If the exhibit is offered for both the purpose of showing what it would cost to reproduce this property new, and also his opinion as to how much it has depreciated from new cost or value, then it seems to me the estimate should be his own, and not that of [578] someone else. I think if there are exceptions here, those exceptions might be brought out so that the testimony would show just what part of this is his own valuation, and what is some other witnesses'. I notice at the top of this statement it says "Valuation based on report by G. D. Hall, also inventory and valuation of electrical equipment by H. B.

(Testimony of J. C. Stevens.)

Tinling," so that from the title it would seem to be based in part, at least, upon the valuation of other witnesses, and it seems to me the jury would be entitled to know how much is his own testimony and the testimony of some other witness as to reproduction cost new. Also, I don't like that word "valuation" because the valuation is the cash market value of the property. The reproduction cost new, or the reproduction cost new less depreciation, is only to aid the jury in arriving at the value. It is only one element of value, but it isn't direct evidence of value. It isn't valuation, strictly, it is a reproduction cost new study, less depreciation.

Mr. Cheadle: With regard to that last point you have mentioned, it is not submitted by the defendants as a valuation; it is submitted as evidence of one of the elements which would be considered by an opinion witness or by an informed buyer in arriving at value, so it is not submitted as a measure of value in and of itself. [579]

The Court: But the point I'm making is that this goes to the jury if it is admitted as evidence, and you call it a valuation in the thing itself. That is the thing I was objecting to, the use of the term "valuation." They will say "This is a valuation" and they will be very likely to say "Well, that is what he thinks is the value of this property." That could be stricken off of there, of course, or changed. Do you have anything further to say, Mr. Ramsey?

Mr. Ramsey: I have further grounds for objection, if the Court please.

The Court: All right.

(Testimony of J. C. Stevens.)

Mr. Ramsey: It is further objected to for the reason this is a demonstration of the very thing the Court mentioned at the beginning of the trial. We are beginning to get now a summation of one witness after another, compiled and submitted to the jury as a separate exhibit and document. In other words, by this method, every witness is corroborating everything every other witness testified to; he's adopting it, embodying it as a part of his testimony. We start on the assumption by this witness that everything testified to by two other witnesses is correct and right, and he's accepting it in toto and he now adopts it as his own. There's simply no getting away from it; we're placing in the hands of the jury a tabulation of what each witness testifies to, in printed form, then we're piling them up, and they're going to the jury; this is a valuation of Mr. Tinling, and then pick up the next one, and this witness has adopted it, and says Mr. Tinling is correct in every detail, and here's another witness that has adopted Mr. Tinling and Mr. Hall and Mr. Stevens' statements as being correct in every detail, and going on from there, I think it is plain what the build-up is, and what the effect must be on the jury. I am objecting, I have objected, and I am going to continue to object to the admission of these things in evidence, because they are simply a tabulation in written form of each of the witness' testimony, and we're now beginning to re-tabulate and bring together and accept by each successive witness all the matters testified to by the former witness, with-

(Testimony of J. C. Stevens.)

out going into it in the cross examination at all. They're standing independent, things that have never been touched on on direct or cross, and now we're preparing to send them out in the jury room as exhibits with the jury for their deliberation.

The Court: Well, have followed the practice of admitting these summaries of studies of experts in these cases. Whether I am right or wrong about that, it is too late to reform now until the Circuit Court of Appeals [581] reforms me. I think an expert may testify and base his opinion on the testimony of other witnesses. An expert can sit through a trial and in some cases testify wholly on the testimony he has heard, so the view I take of it will permit a witness to take an inventory by another witness and testify what his opinion is of the reproduction cost new and the reproduction cost new less depreciation; but I do object to having one witness adopt the opinion of some other witness in a written statement of this kind, and this seems to have some of that in it, at least as to the switch board; I don't know how many other items. I think as to those items he can testify his opinion of depreciation, but I shouldn't think he would be permitted to adopt the opinion of some other witness as to what is the cost of reproduction, and then put it down in here as his own, unless he has exercised independent judgment on it, as an expert, and happens to adopt the other man's figures, but he hasn't done that, at least as to the switch board.

(Testimony of J. C. Stevens.)

Mr. Cheadle: I am not sure what I am about to say is in response to the point you just made. I believe it does have some bearing on it. An opinion witness on the valuation of a piece of real property, residential or farm, being condemned, frequently does, as government witnesses did in these cases, go to the county recorder's [582] office, or they may go to Farm Credit Administration statistics on sales, and they will get what they call records of the comparable sales, or perhaps records of farm sales in general in the area, and on the basis of that they will form their opinion. Now, with regard to electrical equipment, that is, the group of properties and the pumping equipment. Those are the groups of properties which were priced, let's say, by Mr. Tinling. As a matter of fact, the only way a contractor or the only way an owner or builder can determine what the prices of those items are is to refer to catalogs of the manufacturers, to refer to catalogs of distributors or to refer to indices that are published every several months of every year by such magazines as Western Construction Engineers, and electrical engineer magazines; the Associated General Contractors of America prepare their own indices; the Bureau of Reclamation does likewise, and all of those are exchanged. Now, as a practical matter, I think my statement is directed to the practical as well as the legal, as a practical matter, any witness pricing the electrical equipment and the pumping equipment would have to refer to that type of information, and would have to adopt

(Testimony of J. C. Stevens.)

some of it, or consider it as a whole, and say, from that information compiled by others and not by him, "I conclude that this is the reproduction cost of an [583] Allis Chalmers unit"; and I believe your Honor will note upon this identification 15 that it is the items of equipment, manufactured equipment, priced by Mr. Tinling, which to some extent, I believe not altogether, to some extent, were adopted by this witness; not the ultimate price put on by Mr. Tinling. This witness believes those items should be depreciated by what he calls condition per cent, but he is in effect adopting no more, your Honor, than manufacturers' price on those items.

On the items testified to by Mr. Hall I believe this witness has made his own independent investigations of unit prices in comparable contracts let in 1943, and has reached his own conclusions as to what it would cost to excavate anew that canal, to build anew that concrete power plant, and I may say so far as he is adopting quantities estimated by Mr. Hall, that is what every contractor is obliged to do when he bids on a job advertised by the Bureau of Reclamation, the Army Engineers, or any city. They advertise specifications, with quantities; the contractor must adopt those and then form his own judgment as to what he can build those for per unit. I believe that with that explanation, in part practical, your Honor, what this witness proposes to put in here as merely an element which he will have considered in arriving

(Testimony of J. C. Stevens.)

at his ultimate opinion of value is proper, subject to striking out the word "valuation" which is misleading.

Mr. Ramsey: I need do nothing more than point out the fact that so far as the situation counsel referred to where government witnesses testify as to value of lands, that testimony is predicated upon the study of public records, not someone else's statement. Furthermore, those witnesses do not come on the stand to testify, nor put a tabulation in the hands of the jury, of what they allege to be the actual values paid in sales between parties. They come in and give their independent opinion as to the value of that property. True enough, on cross examination if they are asked how they formed those opinions, they will no doubt answer, by studying all available public records as to sales in the area, but they still don't tabulate those sales, set out all the items that have to do with those sales, print them and pass them out and in effect tell the jury "I am testifying as a witness that as to this sale the price paid was so much." They don't do anything of that sort.

Now, it is all very well to say "Well, this value proposition, it is just a standard proposition everybody goes to" but I am going to call the Court's attention to one thing, just one item, generating unit number 1. In Mr. Tinling's breakdown, which is Exhibit number 9, I believe, generating unit number 1 totals 724,000 plus [585] \$32,000 plus \$5000, which is \$61,000.00. Now, Mr. Tinling says

(Testimony of J. C. Stevens.)

he's in the electrical supply business, and that the cost of those items new totals \$61,000.00. In the exhibit just offered this witness has placed upon generating unit number 1 a reproduction cost of \$75,000.00. Now, it is all right for counsel to say "Well, they come from the same figure, because they go to the same source to get them; if this witness looked it up independently they would come back with the same figure" but there is an example of the fact where he did not adopt the figure of the preceding witness, and we have a spread of \$14,000.00 on a single item as to reproduction cost new.

The Court: I take the view here, as I have indicated, that this is admissible as a summary of the testimony of this witness as to his opinion of the reproduction cost new and as to the depreciation that should be computed on this property. I think I would be inclined to admit the exhibit if it is brought out what part of these reproduction cost new pricings are his and what are based upon some other witness' estimates, so that the jury may have that before them.

Mr. Cheadle: May I inquire of your Honor, so that the point you raised earlier will not be ignored, do you want the word "valuation" stricken from the top, at least before any copies are handed to the jury? It [586] appears twice. We want to be scrupulous in carrying that point out, and if your Honor feels that way, I suggest that the exhibit might be used for the purpose of testimony, but no copies handed to the jury until those words are stricken, or if necessary that top cut off.

(Testimony of J. C. Stevens.)

The Court: I think it could be stricken out so that the word could not be read. I do object to the word "valuation." I think it is a little misleading. I know what is intended, but it is capable of construction as referring to the valuation, which is market value, here.

Mr. Powell: We don't have copies of the third sheet prepared, so that these copies we have for the jury will not have the third sheet on them; that is just the segregation.

The Court: Oh, I see, yes. Well, you won't have any testimony directly referring to that, I suppose. The court will recess now. I would like to see counsel in chambers.

(Short recess)

(All parties present as before.)

Mr. Ramsey: Before returning the jury, may I interpose a further objection to the admission of defendant's identification number 15?

The Court: Yes. [587]

Mr. Ramsey: Further objection is made that there is contained in the exhibit a statement of the estimated replacement cost as well as depreciated cost of the power line of the Priest Rapids Irrigation District from the power plant at Priest Rapids to the junction at Coyote Rapids; that for the reason that the government contends that even under the Court's theory of this case, the line having been built by the District and primarily and solely for the use of the district in the transmission

of its own power to its own pumping plant, that the fact that at a later date that line was used for the transmission of surplus power and delivered from the line to the Pacific Power and Light does not change the fact that the line in its entirety is a solely irrigation asset.

The Court: I believe the Court reserved a ruling on the admission of this exhibit until some further testimony was taken. However, the record may show Mr. Ramsey's objection. I presume when it is re-offered again Mr. Ramsey's objection will apply.

Mr. Ramsey: I ask that it be considered that the same objection is interposed when the exhibit is offered again.

Mr. Cheadle: In response to this last objection, your Honor, we merely wish to state that the transmission line from the power plant to Coyote Junction has been [588] used for years for commercial power purposes, and we have made the segregation of the Irrigation District's properties represented by the typewritten sheet attached to this identification 15, the first two pages of which are photostatted, merely for the purpose of segregating the amount shown on the photostatic pages in conformance with the request of the Court, made in view of the so-called Schwellenbach Formula, but we do respectfully submit that the transmission line from the power plant to Coyote Junction, under the Schwellenbach Formula, must be treated as the rest of the power properties allocated under that

formula to irrigation and to power in accordance with the requirements of irrigation, when the government took the property in 1943.

The Court: I might say that is the view the court takes of it on that portion of the objection. Will you call in the jury then?

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

J. C. STEVENS

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. Do you have a copy of identification 15, Mr. Stevens? A. No, I have not. [589]

Q. Mr. Stevens, as to a portion of the items appearing as reproduction cost on the exhibit, did you take the figure of Mr. Tinling?

A. For three items only.

Q. For three items; which items are they, Mr. Stevens?

A. The switch board, seven panels, \$4260.00; the——

Q. Just a minute; that is the item that appears—— A. On the first page.

Q. It is the sixth item from the subtotal?

(Testimony of J. C. Stevens.)

A. Near the bottom of that item IV, the item marked in item IV, generating equipment, switch board, seven panel.

Q. And you have in parenthesis——

A. "See Tinling list". That was the inventory which he had made. Instead of listing them all in here, I just referred to his list. The switch board is made up of many elements, many parts.

Q. And what is the next item, Mr. Stevens?

A. Next item is the traveling crane, second item below that, 10-ton, the one in the power house, \$3600.00.

Q. And what other item?

A. The other item is on the next page, under Roman V, the spare coils for the transformer, the last item, \$1700.00. Now, I adopted his figures as my figures because those items were all frozen at that time anyhow, since July, 1941, by the O.P.A., and the only difference in cost [590] would be a little cost of installation labor involved.

Q. Was labor also frozen at that time?

A. No, sir.

Q. Wasn't the Wage Stabilization——

A. There was a Wage Stabilization Act, but in my experience wages wasn't frozen—too many ways to get around it, but I don't think there was any change in that.

Q. Have you had any experience, Mr. Stevens, in the cost or valuation of switch board panels such as this?

(Testimony of J. C. Stevens.)

A. Not in minute detail. We've designed—of course, the panels, the switch board, in any power plant, or any equipment that we've designed in our office, we have had some electrical engineers employed, and we have them make those panels. I did not do it personally, myself. It was all done under my direction.

Q. It was what?

A. All done under my direction.

Q. Can you say whether or not the item four, switch board, the seven panels, appears to be in order for 1943?

A. Yes, sir.

Q. What about the travelling crane?

A. The travelling crane, I think that is a fair price for that crane at that time.

Q. Now, you mentioned the switch board item under generating equipment. What about the switch board item under pumping [591] equipment?

A. I don't recall whether that—

Q. Did you price that switch board item?

A. I don't remember whether I did or not. I would like to compare that with the Tinling list, because I don't recall whether that was priced independently or not.

Q. I'll hand you, if I may, Exhibit 9, page 9, Mr. Stevens.

A. Yes, I used the same price there that he did. I'm sorry that I did not have that listed before.

Q. Then there are four items, is that correct?

A. Yes, as far as I'm able to determine; as far as I can tell now, only those four items.

(Testimony of J. C. Stevens.)

Q. And what about the price of the switch board panel in the pumping station, does that item of \$3800.00 appear to be in line for 1943?

A. Yes, I think so.

Q. What about the crane in the pumping plant, Mr. Stevens?

A. No, I did not use the same price that he had.

Q. You have a different price on that?

A. Yes.

Q. How did you arrive at your price?

A. I used the same price that I did for the crane in the power plant, because they're identical.

Q. And you got the price of the crane in the power plant from Mr. Tinling? [592]

A. I got that from Mr. Tinling, and I used the same price on that in the pumping station, but he used a different price.

Q. Then we should check that also.

A. No, not at the pumping station.

Q. Then how did you arrive at that?

A. The crane in the pumping station I priced the same as the one in the power plant, but Mr. Tinling did not.

Q. How did you arrive at your value for the crane in the pumping station?

A. Well, I took Mr. Tinling's figure as being a fair price for that crane installed in the pumping station.

Q. Then the figure you have for the crane in the pumping station is also Mr. Tinling's figure, is it not?

(Testimony of J. C. Stevens.)

A. No, Mr. Tinling's figure for the crane in the pumping station is \$3200.00, and mine is \$3600.00.

Q. And what about the coils, the item on the top of page 2?

A. Those are the spare coils for the transformer. They're still boxed there, and they're new, in the Coyote Pumping Plant, and there's been no work done on them. That was the standard price for those coils at that time. I used the same price Mr. Tinling did.

Q. Except for the items, then, that you have mentioned, the four or five items, you made your own independent investigation of cost price?

A. That is right. [593]

Mr. Powell: We would like to renew the offer, your Honor.

Mr. Ramsey: The same objections are interposed that were interposed at the time of the first offer.

The Court: The objection will be overruled, and the defendant's exhibit 15 admitted.

Mr. Ramsey: Exception, if the Court please.

The Court: Exception will be allowed.

(Whereupon, Defendant's Exhibit No. 15 for identification was admitted in evidence.)

Mr. Ramsey: To the furnishing of copies of this exhibit to the jury, that is, furnishing copies of the exhibit to each of the jurors, the same objection is interposed as was interposed to the placing of former exhibits in the hands of the jurors. It is further objected that this particular exhibit is not

(Testimony of J. C. Stevens.)

identical, as the so-called copy being handed to the jury is not identical with the exhibit.

The Court: The record should show that on the copies of this exhibit the wording between the line "Priest Rapids Irrigation District" and the line which reads "Items, description, unit, quantity" and so on, has been deleted and stricken out, and it is understood that that wording will be stricken out on the original by the Clerk. The admission was with that understanding. [594]

Mr. Ramsey: I don't know whether the Court understood the basis of my last objection; it is that to the exhibit as admitted there is a third page affixed. As to the copies now being handed to the jury, it consists of only two pages, without any third page being affixed, so that it is not identical with the exhibit as admitted.

Mr. Powell: May I state for the record that the third page, as I understood the witness's testimony, is merely a re-arrangement of the figures that appear on the first two pages, and therefore could add nothing to the exhibit except to re-arrange the original figures.

The Court: Yes, the objection will be overruled. I assume no testimony will be introduced while the jury has this, relating to the third page.

(Whereupon, the Clerk distributed copies of Defendant's Exhibit No. 15 to the jury and one alternate juror.)

(Testimony of J. C. Stevens.)

Direct Examination

(Continued)

Q. Mr. Stevens, I believe you have a copy of defendant's exhibit number 15? A. Yes.

Q. Referring to the lands, and principally item I, what is that?

A. Well, that includes all the lands and rights of way necessary for the construction of the project new as of 1943. [595]

Q. Have you depreciated that item?

A. Beg pardon?

Q. Has that item been depreciated?

A. No; \$5,000.00.

Q. Would you mind explaining the next section, the power canal?

A. The next is the power canal, 222,000 cubic yards, at \$1.00, gives \$222,000.00, and the condition is 100 per cent, leaving the same item over in the reproduction cost less depreciation. The spillway and crib dam and the power canal, the original cost new, \$3600.00, and depreciated 50 per cent, makes reproduction less depreciation \$1800.00; now, the sum of those items above in item II are shown together, overhead items, \$33,800, which is depreciated at the same rate in the sub-total, would be 99 per cent, then you get a sum of the total of item II, \$259,400 new, and \$257,400.00 on a 99 per cent condition.

Q. Mr. Hall estimated the cost of excavation at less than \$1.00 a cubic yard? A. Yes.

(Testimony of J. C. Stevens.)

Q. Why have you taken a dollar a cubic yard for the cost of excavation?

A. Well, I think that is probably what one would have to pay for that work in 1943? That is my best judgment as to [596] what it would cost.

Q. What would be the difference in cost between April 1 and October 1, 1943?

A. Nothing to speak of.

Q. You would say none?

A. I would say no difference.

Q. Now, what do you base the figure on, of \$1.00 per cubic yard?

A. Well, I base it on records that we had in the office of work, contract work, that was being done at various times in this vicinity, and general knowledge as to the cost of work about that time.

Q. Is there any publication that is used by engineers in fixing their bid prices?

A. Yes, they—well, Western Construction News is a paper that is published in San Francisco. It comes out about 25, 24 issues a year, and it has, every issue tabulates the bids that have been opened on public works during the month, nearly all of them, for this western coast, the Pacific coast, and of course, bid prices vary, have quite a variety, depending on conditions, but they are an aid in arriving at a judgment as to what this excavation might be, coupled with your own general knowledge of the situation.

Q. Do you have the copies of that magazine for 1943? [597]

A. Yes, I have one.

(Testimony of J. C. Stevens.)

Q. And is it here in the courtroom?

A. Yes, back here, if I may——

Mr. Ramsey: May I ask what the purpose of counsel is in this matter? Is he going to offer this magazine as a witness?

Mr. Powell: Well, this perhaps may be more correctly cross examination, if your Honor please, but I merely wanted to point out what particular jobs the construction work was done on.

The Court: As a basis for his estimate?

Mr. Powell: As a basis for his estimate of the unit price.

The Court: I don't believe that that would be admissible on direct examination. I will hear you on that, however, if you want to be heard in the absence of the jury.

Mr. Powell: Well, I won't press it now, your Honor. I'll wait.

The Court: All right.

Direct Examination

(Continued)

Q. Now, what item, Mr. Stevens, have you—how do you arrive at your item for overhead?

A. Well, that is approximately 15 per cent of the subtotal.

Q. What is that made up of? [598]

A. Well, that includes engineering, legal expense, office equipment and expenses and services, stenographic help, travelling expenses, automobile upkeep, and all, and the salary of management and

(Testimony of J. C. Stevens.)

staff and all other expenses that would be, that are, of a general nature, that would apply to the entire project under way.

Mr. Ramsey: Now, if the Court please, I am going to move to have the witness's testimony as to this item stricken and the jury instructed to disregard the testimony and disregard the item as it appears in the compilation of his testimony, upon the grounds and for the reason that these items are not proper items to be added to a reconstruction cost. The question that is presented there, and purely the question there, is the cost of reconstruction. It does not embrace nor include all of these various items that the witness has testified he's added 15 per cent to his cost charges upon. I might point out that if my compilation is correct this amounts in the total to \$142,265.00 added to the estimated cost of replacement as of the date of taking. To that has been added an additional item of interest during the period of construction amounting to \$31,000.00 in the total tabulation, and I do earnestly submit to the Court that if we're to proceed in this case on the basis of reproduction cost less depreciation, that we're entitled [599] to insist those items be held down to actual reproduction cost, and not all the items that an engineer estimating the cost of a project might tack on to add on to his bill.

The Court: Objection will be overruled.

Mr. Ramsey: Exception.

The Court: Exception allowed.

(Testimony of J. C. Stevens.)

Direct Examination

(Continued)

Q. Why, Mr. Stevens, have you depreciated the crib dam?

A. Well, part of it's been washed away. The rest of it is exposed part of the time. Some of the timbers are beginning to rot, and I judge, my judgment is that it probably should be depreciated about 50 per cent.

Q. All right; now, going down to the next item, generating plant, you have an item of excavation of rock, \$5.50?

A. That is for the power house, yes.

Q. And why is that so high, your excavation, above his, only \$1.00?

A. Well, the excavation above is unclarified, some rock, some loose rock, some soil; this is all solid rock, and it is the foundation base of the power house. It has to be trimmed pretty closely to exact lines.

Q. How is that done?

A. Well, it is done by either hand drilling or drilling by compressed air, in small quantities, I mean in small holes, and shooting cautiously and carefully all over, [600] which of course costs money.

Q. And is it necessary to go down below the water level?

A. At this place, I wasn't there when it was constructed, but it seems to me perfectly obvious

(Testimony of J. C. Stevens.)

that they would have to do some coffer damming and possibly some pumping while this work was under way.

Q. What about the next item?

A. The next item is re-enforced concrete. I fixed a price of \$50.00 per yard on that, which includes the re-enforcing; that is re-enforced concrete.

Q. Are contracts taken on that basis?

A. Yes, sometimes. This is the total item for the structure, power house structure. It includes all of the windows and sash and trim, re-enforcement, roof, all the other things that are not specifically set forth. It has all been lumped into the cost of the concrete.

Q. So that the record may show, Mr. Stevens, what is the item you have included for excavation, new and depreciated?

A. The excavation cost \$53,900.00 new; I depreciated that 90 per cent, leaving \$48,500.00 for the depreciated cost.

Q. You mean you depreciated it 10 per cent, don't you?

A. Yes, I mean I set up a 90 per cent condition.

Q. Why did you depreciate the structure excavation at 10 per cent, whereas you did not depreciate the excavation for the canal? [601]

A. Well, the power house itself is a concrete structure that has some little element of depreciation in it. It may last for a long time, but there is an element of depreciation.

Q. I'm talking about the excavation.

(Testimony of J. C. Stevens.)

A. And when you depreciate the power house you depreciate the excavation on which it is constructed at the same time. If you were to replace the power house you would not very likely replace it on the same excavation.

Q. Now, what item have you included for the reproduction cost and the depreciated cost of the power house concrete?

A. The cost new of the power house, \$145,000.00, which is depreciated on a 90 per cent condition, leaving \$130,500.

Q. What are the next items?

A. The next items are the gates. There's four of them on the fore-bay, I mean at the head of the penstocks, and there's also some old gates in the tail race at the outlet of the tubes, and they're not used now, although they could be used and the equipment is there. I have set an item of a thousand dollars apiece for those gates, making \$4,000.00, which I have depreciated under a 30 per cent condition, leaving a depreciated cost of \$1200.00.

Q. And what about the next two items?

A. Now, the bar screens are estimated at \$3600.00, with a condition of 40 per cent, leaving a depreciated value of [602] \$1440.00. The operators' cottages, there's three of them there, and the price of \$5500.00 includes the wiring and transformers that were required for the cottages, and I've set a condition of 60 per cent for those, leaving \$3300.00 as the depreciated value. The subtotal is \$212,000.00 new, and \$184,940.00 depreciated,

(Testimony of J. C. Stevens.)

which gives an average condition of 88 per cent, and to that has been added the overhead of approximately 15 per cent, in round figures, leaving a total for item 3, \$243,800.00 new, and depreciated on an average condition of 88 per cent.

The Court: That seems to be a good place to stop. We'll adjourn now until 10 o'clock tomorrow morning.

(Whereupon, the court took a recess in this case until Friday, February 14, 1947, at 10 o'clock a.m.)

Yakima, Washington, February 14, 1947

10 o'Clock A.M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Cheadle: If the Court please, I thought before the jury was called in I would hand to your Honor an order providing for the jury view.

The Court: Have you seen this?

Mr. Ramsey: Yes, your Honor.

Mr. Cheadle: Mr. Ramsey has found it satisfactory. We have not yet signed it for counsel. We suggest, your Honor, that it should be dated February 10th.

The Court: Yes, I think so.

Mr. Ramsey: I tied up government funds on that. I would like to have the order support it of that date.

The Court: Yes. I suggest that you sign it.

Mr. Cheadle: We will immediately, and hand it to the Clerk.

The Court: This thought occurred to me after we had our conference last night about the other case. I wonder if it wouldn't be advisable, rather than to stipulate [605] that the court take the case involving the lands owned by the district under advisement, that you stipulate that that action be held in abeyance in its present status until the determination on appeal or final determination of this case. My thought in that is that that would enable you to bring in additional testimony on either side. As I recall, the testimony wasn't closed in that case, and either side was to have the privilege of bringing in additional testimony if they so desired, and it seems to me it would be desirable to keep it in that condition rather than have it closed and taken under advisement by the court. You don't know what would develop on appeal in this case, and either side or both might want to come in with testimony that is rendered pertinent or desirable.

Mr. Powell: I might state that Mr. Fletcher has communicated with all the directors, and they have consented to the continuance of the Richland case.

The Court: Yes; all right.

Mr. Cheadle: We will prepare an order accordingly, then, and present it Monday.

Mr. Powell: We have prepared the segregations of Exhibits 9 and 11. I think Mr. Ramsey has copies of the segregations as prepared, and if they are satisfactory to counsel they may be attached to the exhibits, and it is [606] agreeable with us that the Court advise the jury what they are and what they're for without putting any testimony in with reference to them, because they contain no new figures, but just the segregation of the amounts, that is, the total amounts.

Mr. Ramsey: The same general objection is interposed as to the original exhibits, of which these are a summary.

The Court: Yes, that will be understood, and the objection will be overruled, and the government allowed an exception. You may bring in the jury, then. These may be considered as offered as a part of these exhibits, and to be attached to them.

Mr. Powell: Yes, your Honor.

The Court: I think that would perhaps be preferable than having them brought in as separate exhibits, because they wouldn't be attached, and the jury might not consider them in connection with the exhibits.

Mr. Powell: We offer them in connection with 9 and 11. They are designated as such; and ask that the Clerk attach the appropriate ones to the appropriate exhibits.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.) [607]

The Court: Members of the jury, in connection with exhibits 9 and 11, certain summaries of the figures have been prepared, and those summaries will be attached as the last page of each of those exhibits. You may proceed.

J. C. STEVENS

a witness called on behalf of the Defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. You had finished your description of the bar screens and explained your depreciation figure on bar screens, Mr. Stevens.

A. Well, the bar screens, some of them are wood, and not a permanent type of construction, so I depreciated them. I set up a condition, present condition, of 40 per cent of an estimated cost of \$3600.00, leaving \$1440.00 for depreciated value. I think I explained that yesterday.

Q. Now, you have what for the three operators' cottages?

A. I explained that yesterday.

Q. You did?

A. Yes.

Q. And did you have a total?

A. The price there of \$5500.00 for operators' cottages new would include the wiring and transformers.

(Testimony of J. C. Stevens.)

Q. You explained that yesterday?

A. Yes, I did. In fact, I explained all of item 3.

Q. Had you completed the total? [608]

A. I think so.

Q. Now, as to item 4.

A. Item 4 is the generating equipment in the power plant. Unit number 1 is the old Allis Chalmers unit, on which I placed a price new of \$75,000.00. I considered its condition as 60 per cent, leaving a present value of \$45,000.00 for the unit. That includes the turbine, the three wheel turbine, and the generator, and the governor, including the tanks, pumps, and so forth that are included with the governor. That is an Allis Chalmers governor also. That unit is rated at about 900 kilowatts under a unit power factor, but the unit actually has been running around 1200 kilowatts at all times. In other words, the old rating in those days was less than the actual capacity of the unit.

Q. And what about the next item?

A. The next item is unit number 2, that is the General Electric generator with the propeller type of water wheel. It includes the Woodward governor, and the estimated price of that new is \$82,000.00 installed, with a virtually new—that is, within the last five or six years, so I placed a condition on that of 90 per cent, leaving \$73,800.00 as the installed cost depreciated.

Q. Mr. Stevens, you say five or six years?

A. Well, it was installed, according to the testimony here, finished in 1941, I think. [609]

(Testimony of J. C. Stevens.)

Q. And you're appraising this property——

A. As of 1943.

Q. So at that time it was only two years old, wasn't it?

A. Yes, that's right. I stand corrected. I was thinking of the present time. Then the turbine driven exciter that is there between the two units, and has a water wheel and a direct current generator upon the floor, I estimated that new at \$5700.00, and set up a condition of 60 per cent, leaving \$3180.00 as the depreciated cost in '43.

Q. I think you misread that figure. Isn't that \$5300.00?

A. It is \$5300.00. This is a little blurred here. I think that is right. \$5300.00 new is correct.

Q. And what is the next item?

A. The next item is the motor generator set. That consists of an alternating current induction motor directly coupled to a direct current generator. It is used for spare or other excitation purposes for those two units. The estimated cost new of that was \$3500.00, and the condition is 60 per cent, leaving \$2100.00 as the depreciated cost.

Q. And you have taken the next item, switch board panels, as the value given by Mr. Tinling?

A. I accepted his value of \$4260.00 for the switch board, but I set its condition also at 60 per cent, leaving a depreciated value of \$2560.00. [610]

Q. Now, what have you included in the next item, called station wiring?

(Testimony of J. C. Stevens.)

A. The next is the station wiring and storage batteries and the wiring conduits. I set a value of \$7080.00 on that, with 60 per cent condition, leaving \$4250.00 depreciated value. The next item is the 10 ton travelling crane. I accepted Mr. Tinling's price on that also, \$3600.00, 60 per cent condition, \$2160.00.

Q. What is there about those cranes to wear out, Mr. Stevens? A. Nothing.

Q. Why do you depreciate it 40 per cent?

A. Well, when you set up the unit, all the equipment of the plant, you will notice, has been set up at 60 per cent on the assumption not that they wear out, especially, but there is an obsolescence, sort of a creeping paralysis you might say, from obsolescence. The time may come when they'd want to replace the entire unit. so the only thing that would be left in there if they replaced that equipment, all of it, the switch boards and everything, that would leave your junk value. Although they're serviceable, the time may come when they want to replace them, so they have all been depreciated 60 per cent, I mean condition 60 per cent.

Q. That is, depreciated 40 per cent?

A. That is right. Now, the spare parts, the various things [611] that are on the Tinling list, that I set up new of \$2510.00 with the same condition of 60 per cent, leaving \$1500.00. The irrigation pump, 50 horsepower unit, or motor, with an 8 inch United Iron Works pump, I set the price new of that at \$2700.00, and 60 per cent condition gives \$1620.00.

(Testimony of J. C. Stevens.)

Now, there is miscellaneous and some omitted items that were not included, I don't know, generally in an estimate of that kind one makes an allowance for items in an inventory that have been overlooked or omitted, they're not large, they're small things, but it is frequently general practice to make some allowance for those and include them. The miscellaneous total, estimated \$3000.00, at 60 per cent condition, is \$1800. Now, from that total of item 4, generating equipment, we get a reproduction cost new of \$188,950.00, and the average condition of the entire plant, which of course used the old equipment at 60 per cent and the new at 90, gives an average condition of 73, I think that is, it is a little blurred here, 73 per cent, making the depreciated cost of \$137,970.00, to which has been added overhead of approximately 15 per cent, in round numbers, making a total for item 4 of \$217,300.00, which, with the same per cent condition of 73 per cent, gives a final value of \$158,700.00 for the depreciated cost, reproduction cost.

The next item, item 5, transmission lines and substations. [612] The first item is the transmission line from the Priest Rapids plant to the Coyote pumping station, 66,000 volt line, 16 miles of it, and I placed a price, a reproduction cost new, of \$5500.00 a mile, or \$88,000. That is depreciated 50 per cent, leaving a present value, present cost, of \$44,000.00. Next, the Priest Rapids substation, consisting of transformers, circuit breakers, coils, and so on, I placed a price on that of \$15,325.00, and on

(Testimony of J. C. Stevens.)

that I placed a condition of 60 per cent, same as for the power house, leaves \$9195.00 as the depreciated cost. The Coyote substation also consists of three transformers, switches, coils, and four-pole structures, two of them, on which I placed a cost new of \$11,975.00, depreciated 60 per cent, or rather a condition of 60 per cent, leaving a present depreciated cost of \$7175.00, in 1943. The next item was spare coils for the transformers. They're new, and have never been unboxed. One corner of the box was opened so I could see what the package contained. On those I placed the same price Mr. Tinsling did, of \$1700.00, and since they're new, there is no depreciation on them, so we carried that at \$1700.00 in the depreciated column.

That gives a subtotal for item 5 of \$117,000.00 new, with an average depreciation, average condition, of 53 per cent, \$62,070.00 in the depreciated column, to [613] which was added overhead of approximately 15 per cent, leaving a total for item 5 of \$134,550.00, 53 per cent condition, \$71,400.00 in the depreciated column.

The next item is the Coyote Pumping Station. The excavation for the building was estimated at 4000 cubic yards, at \$4.00, makes \$16,000.00 There is no depreciation on that. Concrete, re-enforced, and plain concrete, in the structure, I placed a price of \$50.00 per cubic yard on that, in place. That includes all the re-enforcing and also all the other facilities in the building, doors, windows, trim, roof, and all that sort of thing, making a total cost for

(Testimony of J. C. Stevens.)

the building as of 1943, \$34,500.00, on which a condition of 90 per cent was placed, leaving \$31,050.00 in the depreciated column. There is an intake, timber intake tunnel, contains about 38,000 feet, board measure, on which I placed a value of \$90.00 per thousand in place, or \$3420.00; depreciation, or condition, rather, on that was set at 75 per cent, leaving \$2560.00 for the depreciated cost; and discharge pipe of 72 inches, at the time, on which I placed a price of \$16,100.00.

Q. Mr. Stevens, on that discharge pipe, that was not there when you saw the plant?

A. No, I did not see it. It was there in 1911, but I did not see it in 1943. [614]

I only placed a condition of 30 per cent on that, because I was informed that they had staves and bands and things for repair there on hand, already paid for, substantial amount, so that the pipe could have been repaired and replaced with the equipment there, so that this depreciated value of \$4900.00 was intended to include the repair parts already there.

The operators' cottages, two of them, new, including the wiring to them, \$1500.00 each, or \$3000.00, depreciated to a condition of 60 per cent, leaving \$1800.00. Subtotal for item 6, new, \$73,020.00; the average condition is 77 per cent, leaving a depreciated cost of \$56,310.00, to which was added overhead of approximately 15 per cent, leaving the final figure for item 6 of \$83,970.00, at 77 per cent condition, or \$64,760.00 in its depreciated condition in 1943.

(Testimony of J. C. Stevens.)

The next item is the pumping equipment in the pumping station. The first item there is the old units, 450 horsepower units, connected to pumps in the basement, and those pumps are tied in series, 36 inch steel pipe connecting the discharge of one with the suction side of the other. On each of those units I placed a price of \$25,000.00 new, or \$50,000.00 for the two. The condition was placed at 40 per cent, leaving \$20,000.00 as the depreciated cost. Then there is a new pump, a third [615] pump, that is there. It is a General Electric unit, variable speed—may I correct the first two items here. That merely refers to the motors, and does not include the pumps. The motor for the General Electric unit, I got some prices for that one of my own, and placed the installed price at \$15,000.00 new, and as it is a recent installation, the condition was placed at 80 per cent, leaving \$12,000.00 for its price as of the depreciated value in 1943, depreciated cost.

Then there are the pumps. There's the two Allis Chalmers pumps, each connected to one of those 450 horsepower motors, and the two pumps are connected in series, as I have already described. On those I placed a price of \$10,000.00 new, or \$20,000.00 for the two, and placed the condition at 30 per cent, leaving a \$6000.00 cost in the depreciated column. The new pump, which has a capacity of 28,000 gallons per minute, variable speed, that is, it is driven at a variable speed by a variable speed motor, I placed a price on that of \$6000.00. condition 75 per cent, leaving \$4500.00 as its depreciated cost in '43.

(Testimony of J. C. Stevens.)

Then there is an item of piping, valves, and fittings, which I placed at \$3000.00, a condition of 40 per cent, leaving \$1200.00 as the depreciated cost.

Then there is an old vacuum pump that is used for [616] priming the two pumps; it is motor driven, on which I placed a value new of \$2000.00, 40 per cent condition, leaving \$800.00 as the present value or cost in '43.

Pump and motor of 50 horsepower for operators' houses, gardens, and so forth, and that also furnished water to the tank up on the hill for operating the hydraulic valves, I think, as near as one could determine at that time, on which a price of \$6500.00 new was placed, with a 40 per cent condition, gives \$2600.00. That pump was not in there in 1947, not in place in 1947. It had been removed.

Q. You have taken that description from——

A. I took that description from Mr. Hall or Mr. Tinling. Both of them, I think, were the same. Then there was a 5 horsepower motor and pump. I've got that marked for the hydraulic valves. I am not certain whether that or the other pump was used for the hydraulic valves. It doesn't matter; they had to have some pump, and it may be that that pump was used for the valves, on which I have placed a cost new of \$400.00 each, leaving \$800.00 for the pair, condition 40 per cent, \$320.00 depreciated condition.

Then there was the oil pumps and motors for the bearings and other services, two of them, at \$125.00 each, making \$250.00, 40 per cent condition, leaves \$100.00 for the depreciated cost as of '43.

(Testimony of J. C. Stevens.)

The switch board panel, with all of the instruments and accessories, I used the same price that Mr. Tinling did, I thought that was a fair value, of \$3800.00. I depreciated it, however, on 40 per cent condition, leaving a depreciated cost of \$1520.00. There is a bilge pump and motor, that is pump to unwater the tunnel or any other portion of the foundation when they wanted to unwater portions for access, was placed at new \$400.00, 40 per cent condition, leaving \$160.00 as depreciated cost.

The 10 ton crane, I used the same price as I did for the crane in the power station. It seems to be the same type and kind, and at \$3600.00, and it is depreciated 40 per cent, I mean a condition of 40 per cent, leaving \$1440.00. Then there is wiring and miscellaneous items of \$6000.00, also placed at a 40 per cent condition, leaves \$2400.00 in the depreciated column.

Subtotal for that item is \$117,350.00, and the average condition would be 45 per cent, leaving a depreciated cost in '43 of \$53,040.00, to which has been added the overhead item of approximately 15 per cent, making a total for item 7 of \$134,900.00, with the 45 per cent condition in 1943, \$61,000.00 depreciated condition.

Q. That description is of the equipment in the Coyote Pumping Station?

A. That is the equipment, and the substation; the substation is just in another building adjacent to the building; they're not all in the pumping station.

(Testimony of J. C. Stevens.)

Q. The description that you have just given is the description of the equipment in the pumping station?

A. Equipment, let's say, at the pumping station; it includes the building and its contents, and the transformer station and the four-pole structures adjacent to the building, and the cottages. No, the cottage is included in the item above, item 6.

Q. Now you have concluded with item 7?

A. Yes.

Q. Now, on item 8, the irrigation system, when did you first see the main canal and the lateral system.

A. In 1911.

Q. Did you go over the canal system?

A. In 1911?

Q. Yes. A. Oh, yes, all over it.

Q. Did you make any surveys of it then?

A. Yes, and outlined improvements to it.

Q. Pardon?

A. Yes, and outlined improvements to it, that is, to the [619] distribution system, and certain improvements, and also recommended the completion of the lining of the canal at that time.

Q. What was the condition of the concrete lining at the time you were there in 1911?

A. It was in very good condition, and the canal was about half lined, half of the main canal had been lined with concrete in 1911; maybe not half; let's say 40 per cent.

Q. Was it new?

(Testimony of J. C. Stevens.)

A. Well, it had been built year after year; virtually new. Wasn't any of it more than about three years old, four years old, and the work that had been done the previous year, in 1910, of course was a better job. They used a little thicker concrete, and the later work that was done in '11, in 1910 and 1911, was a better quality than that done earlier. It was a little thicker. Some of it was just a plaster cement coat, and that broke down pretty quickly, I imagine.

Q. And that is part of the concrete lining in evidence near the outlet?

A. No, the concrete lining at the intake—yes, after you get past the transition sections there, from the pump discharge to the canal, what lining is there is the old original lining. I don't know whether that was—yes, that was in in 1911, I think. I'm sure it was. [620]

Q. Have you allowed any value to that lining?

A. No.

Q. All right; now, what is your description of this irrigation system, Mr. Stevens?

A. Well, there is the excavation of the main canal, including structures that have to go into it; the total yardage, I took the quantity from Mr. Hall's inventory of 266,000, but I placed an average price on it of 35 cents for excavation, leaving a cost new of \$93,100.00. There has been no depreciation on that, as far as the excavation is concerned, so that the present cost in '43 would be \$93,100.00. Some loose rock, and some rather hard rock, as a

(Testimony of J. C. Stevens.)

matter of fact, in places, and on that I placed a price of 60 cents per cubic yard for 74,000 cubic yards, leaves \$44,400.00, with no depreciation, so we have \$44,400.00 in the last column. Flumes were priced at \$800.00, and the condition is set up at 40 per cent, leaving \$320.00 for the depreciated cost in '43.

The concrete included the work up at the head works and a few structures, 200 cubic yards, on which I placed a price of \$50.00 a cubic yard, \$10,000.00, condition set up at 60 per cent, leaving \$6000.00 for the depreciated column. There is the gates and checks and miscellaneous items of \$1500.00, with a condition of 60 per cent, leaving \$900.00 for depreciated cost. There is [621] a distribution system, some pipes, and some open ditches, and headings, and various things, for about 1500 acres, which I placed at \$20.00 an acre, or \$30,000.00 new, with a condition of 75 per cent, leaving \$22,500.00 for the distribution system.

There is the office equipment, pipes, and motors, and stores, pumps that were in stock, on which I placed a price of \$840.00, with a condition of 75 per cent, leaving \$630.00; miscellaneous items, \$3000.00, 60 per cent condition, leaves \$1800.00. Then the subtotal for the irrigation system of \$183,640.00 new, depreciated condition of 93 per cent, leaving \$169,650.00 depreciated cost, as of 1943, to which has been added the overhead, approximately 15 per cent, leaving a total for item 8, the irrigation system, of \$211,200.00 new, 93 per cent condition, \$195,200.00 as the depreciated cost in '43.

(Testimony of J. C. Stevens.)

Q. Now, what is the total, then, of items 1 to 8?

A. Beg pardon?

Q. What are the totals of your items 1 to 8?

A. Total for the items 1 to 8, inclusive, \$1,290,-120.00 new, an average condition for all those items of 80 per cent, leaving \$1,026,140.00 as the price cost in depreciated condition in '43. Now, to that I have added interest during construction, which is based on 3 per cent of that subtotal. It is really, I estimated a period of construction [622] of two years, so that the interest during construction should be at the average rate of half the total interest for the whole period, so that would be 3 per cent, that would be 6 per cent for the two years, and half of that would be 3 per cent for one year, 3 per cent for the interest, on which I get an interest value of \$39,000.00 for the item new, and \$31,000.00 depreciated. Adding those together gives a grand total for the whole project of \$1,329,120.00 new, 80 per cent condition, \$1,057,140.00 in its depreciated condition as of 1943.

Q. Now, you have included in the exhibit, Exhibit 15, the irrigation assets or properties and the power properties, haven't you?

A. In what I have read, yes. What I read was the total irrigation and power properties combined.

Q. Yes. I am asking, Mr. Stevens, if the figures that you have given represent, from your observation and the information you have, the reproduction cost new and the depreciated value of the irrigation properties on April 1, 1943.

(Testimony of J. C. Stevens.)

A. I wouldn't say a depreciated value. I'd say it represents the reproduction cost new and the reproduction cost less depreciation as of that year.

Q. And what about that date, April 1, 1943?

A. Well, it would be any time between April and October. The prices would be the same. There is no change in the prices.

Q. And what about the power properties as of October 1, 1943?

A. They would be represented by this tabulation at that time.

Q. I see. Now, you have also prepared, which is attached to the original, a segregation of the items in the exhibit, showing the segregation between irrigation properties and power properties?

A. Yes, I have.

Q. You won't need to give that, Mr. Stevens.

A. I've got the same totals and everything; it is just merely subdivided, segregated, into those two elements. Power plant would include the power plant and the transmission line to Coyote Junction, and the irrigation system would include the Coyote Pumping Plant plus the transmission line to the pumping plant. That is the only item I had to make a division of. In item 5 in my estimate I had transmission and substation all together. I had to subdivide that to get the total.

Q. Now, in arriving at a valuation of a property such as this, do you take into consideration the values that you have just described and given to us?

A. Well, they're one factor to be considered.

(Testimony of J. C. Stevens.)

Q. Is there any other factor to be considered?

A. Yes, several. If one had complete information one may [624] make a determination of the probable capitalized earning value of the plant. That would be another factor to be considered. If one had the actual historical cost that would be another element to be considered. In this case we did not have it.

Q. What about the going concern value, is any consideration given to that?

A. It is sometimes, but I haven't included any item in here except—well, there is no item included in there as such for going concern value.

Q. Did you compile for your information any figures in connection with possible capitalization and net earnings, or of net earnings?

A. Yes, I did, of the power plant; not of the irrigation system, but of the power plant alone.

Q. And on what basis—well, rather, what basis did you use for making that computation?

A. Well, the first thing one had to determine was the probable income, and then from the income you would deduct the annual expenses, until you finally arrive at the final net earnings of the plant, and capitalize that.

Q. Did you do that in this case?

A. Yes, I did.

Q. Have you taken into consideration, Mr. Stevens, that as well as the other elements? [625]

A. That as well as what?

(Testimony of J. C. Stevens.)

Q. Have you taken that into consideration in arriving at a value?

A. Well, I took that as one element to be considered, one factor.

Q. What rate of interest did you use in your capitalization?

A. I used 3 per cent; also 3 per cent interest on the capitalized value of the property.

Q. 3 per cent interest as a charge against it?

A. As a charge, an annual charge, against the earnings.

Q. In your capitalization of net earnings did you arrive at what you considered—just answer yes or no, did you arrive at what you considered the value by capitalizing the earnings of the power plant?

A. Well, I arrived at a capitalized earning amount here.

Q. Value——?

A. But I wouldn't set that up as the final value of the property at all, but it is an element, a factor, to be considered in arriving at a value.

Q. In your study, Mr. Stevens, of the possibilities of marketing power in the Pacific Northwest, when you made the study did you come to any conclusion as to whether there was a market for the power at this plant?

A. Oh, I don't think there is any doubt about the market for the power. [626]

Q. Was the market better in 1943 than it had been, or worse?

(Testimony of J. C. Stevens.)

A. Well, I think the market was—well of course, the market was probably the best during the war.

Q. Wasn't that during the war, 1943?

A. Yes, 1943 was right during the war. Of course, this capitalized value must be considered over a long period of years after the acquisition of the property.

Q. We're valuing the property, Mr. Stevens, as of October 1, 1943, and we must take the conditions as of that time.

A. The conditions are as of that time, as of 1943, that is, the prices, and interests, and the capitalized value and market price for power are taken all as of that period in 1943, but what I meant is the purchaser, of course, could not realize on it until he can operate the plant. That would be the basis on which, however, he would make a determination as to the acquisition of the property in '43, the prospective earnings.

Q. Did you arrive at an opinion, Mr. Stevens, as to whether the production of the power plant could be increased?

A. Yes, it can, by some work on the canal, to get in more water during low stages of the river.

Q. Is there any limitation, is the production of power limited by the flow in the river?

A. At the present time it is limited.

Q. By the flow in the river, Mr. Stevens? [627]

A. No, by the flow in the canal.

Q. I see. And did you take that into consideration in arriving at your value? A. Yes, I did.

(Testimony of J. C. Stevens.)

Q. How much of the flow in the river at low stages is utilized by the power plant?

A. Well, at the present time, 8 or 9 per cent, maybe, something like that. A small portion of the total flow of the river.

Q. And from your examination of the power plant and the power canal, Mr. Stevens, is it feasible to construct a canal so that the water may be——

Mr. Ramsey: Now, if the Court please, I object to this entire line of questioning. I object to any showing of valuation based on the formula that counsel has indicated. It isn't a question here of what might be the value of the reconstructed plant, or what might be the value if a million dollars was spent out there. The question is the value of the property at the time it was taken, and if we're going to go into the field of hypothetical, possible development of an entirely different hydro-electric plant, by the expenditure of hypothetical money, under hypothetical conditions, we're opening up a field here——

The Court: I think the Court ruled on that before. [628] I'll sustain the objection.

Mr. Powell: We'd like to be heard on that, your Honor.

The Court: Yes, all right; if the jury will step out.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

(Testimony of J. C. Stevens.)

Mr. Cheadle: If the Court please, we submit that on this question the leading case is *Olson vs. United States*, which is cited in each of the briefs which have been submitted by the defendant district. It was decided in 1933; it has been followed in a great number of Circuit Court cases. I read just one paragraph from it:

“Just compensation includes all elements of value that inhere in the property, but it does not exceed market value fairly determined. The sum required to be paid the owner does not depend upon the uses to which he has devoted his land, but is to be arrived at upon just consideration of all the uses for which it is suitable. The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future is to be considered, not necessarily as the measure of value, but to the [629] full extent that the prospects of demand for such use affects the market value while the property is privately held.”

That case has rather recently been followed by the Ninth Circuit Court of Appeals. I was reading at that point, your Honor, from page 255 of the *Olson* case, which is 292 U. S. 246. That case was followed by the Ninth Circuit Court in the case of *U. S. vs. Waterhouse*, 132 F. (2d) 699, and I read briefly from page 703:

“Appellant’s argument is based on the assumption that appellees’ witnesses were testify-

(Testimony of J. C. Stevens.)

ing as to what prices the land would sell for if subdivided and as to rents which could be derived from the land if it were improved. The effect of that argument is that such witnesses were testifying not as to present value but as to some future value. The record gives no support to that argument, but, in fact, shows that the witnesses were testifying as to the value of the land in November, 1940."

In that case, you will note from the title that the United States was the appellant, and the decision was affirmed, the trial court decision was affirmed by the Ninth Circuit Court, and by an evenly divided court, there being many other questions involved, the case was affirmed [630] by the Supreme Court of the United States.

The Waterhouse case involved sugar cane lands just outside Pearl Harbor. They were being acquired by the government. It was the contention of the land owner, and they submitted testimony to this effect, a number of opinion witnesses testified as to the value which that property had if subdivided, and they showed that there would be demand in the near future, and that it was an item of value, not a measure of value, your Honor, but an element to be considered by any prospective purchaser who was having an appraisal of the property made, that element being the value that the property had as of the time of taking in view of the prospect for use of it in the near future as subdivided residential property.

(Testimony of J. C. Stevens.)

Now, we submit that Mr. Ramsey's objection is not in accordance with the law, and we also submit that his objection to this witness's testimony does not accurately state what his testimony has been to this point, nor does it accurately state the purport of the question to which he objected. Mr. Ramsey spoke of a hypothetical, entirely new power plant. The only question, your Honor, has been with regard to some improvement in the canal; no change in the power plant structure, no change in the power plant generating equipment, nor the turbines that drive the generators; merely some change that might be made in [631] the canal, which would result in the immediate future, it being a comparatively simple operation, in enlarging the power production of that plant, and we submit that the question is proper in those circumstances of the testimony offered, and in view of the cases cited.

The Court: Well, of course, I know the highest and best use rule, and I will instruct the jury on that. I think an example of that is your eighty acres here that are not being put to any use now, vacant land, but there is testimony that it is capable of use as farm land. In view of that testimony the question should be submitted to the jury as to whether the highest and best use isn't for farming purposes, even though it is not so used, and compensation made on that basis. The same thing is true of your land which is capable of being subdivided and sold as subdivided land. The thing that bothers me here, what you're talking about is

(Testimony of J. C. Stevens.)

not a different potential use for your power plant property, but what its value would be if its capacity were enlarged by some prospective improvement which wasn't made at the time of taking, or wasn't in contemplation, at any rate in the near future, and required the expenditure of a substantial additional investment. It doesn't seem to me that is any different in principal than if you attempted to show that by putting in improved and larged dynamos you could increase [632] your capacity, and that the cost would be justified because you would get a larger return, and I would have to let the government show it couldn't be increased, or it would cost more than you claim it would. We could go on for weeks on that theory. It seems to me the principle you have stated does not apply to this situation. The objection will be sustained. Exception allowed the defendants.

Just a moment, before the jury comes in. I just happened to think of this, and thought I might forget it later on. There isn't any question here about any of these other defendants named having any substantial interest in this verdict at the present time? I notice there are a large number of defendants included here in addition to the defendant Priest Rapids Irrigation District. I understand, of course, Mr. Ramsey's contention is that the District owns only the bare legal title, but is it conceded that the District is at least the owner of the legal title of all the property involved?

(Testimony of J. C. Stevens.)

Mr. Ramsey: Yes, your Honor. At the time that the action was instituted there was outstanding bonds of the District, and so far as could be determined all holders of all bonds of the District were joined as parties defendant. However, all of those bonds have been discharged, and any lien which might have attached to the [633] District facilities by reason of the outstanding bonds has been wiped out, so that at this time it is conceded that only the District is interested in this proceeding.

The Court: I see; the District and the government. That is, the District is on the defendant's side.

Mr. Ramsey: Yes.

The Court: I just wanted to be sure of that.

Mr. Ramsey: That accounts for the large number of defendants joined as party defendants in this case, was the matter of the outstanding bond issue.

The Court: The state didn't own all the bonds?

Mr. Ramsey: No, the state did not own all the bonds.

The Court: We'll take a recess now for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

J. C. STEVENS

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Powell:

Q. Mr. Stevens, you have been asked to form an opinion as to [634] the value of the properties that you have just described? A. Yes.

Q. And have you formed that opinion?

A. Yes, I have.

Q. What elements have you taken into consideration in forming that opinion?

A. Well, all the factors and elements that were available, the reproduction cost less depreciation as of 1943, and my general knowledge of the territory and the irrigation system as it was constructed, and the power plant as it was constructed, and examination of the property, not only in 1911 but also in 1943.

Q. You mean in 1946?

A. I mean in 1946, yes.

Q. Did you also take into consideration a computation or any information as to capitalization?

A. Yes, I gave that some weight, as to the power plant alone.

Q. What, Mr. Stevens, in your opinion, was the fair market value of the power plant properties as you have described it as of October 1, 1943, that

(Testimony of J. C. Stevens.)

is, that amount which in your opinion a buyer ready, able and willing, but not required to buy, would pay to a seller ready, able and willing, but not required to sell, both parties being fully informed? [635]

A. I put a value on that, a fair market value, of \$635,000.00.

Q. And having in mind the elements of the question I have just asked you, what is your opinion of the fair market value of the irrigation properties, that is, the transmission line from Coyote Junction to the pumping station, the pumping station with all the equipment and fixtures, and the canal and lateral system?

A. I place a fair market value on that property as of October, 1943, of \$315,000.00.

Q. Now, what in your opinion would your value be as of April 1, 1943?

A. Same value, \$315,000.00.

Mr. Powell: That's all.

Cross-Examination

By Mr. Ramsey:

Q. Mr. Stevens, in arriving at your conclusion as to the market value of that property, did you acquaint yourself with the history of the property?

A. You mean the financial history of it?

Q. Yes.

A. Well, I was more or less acquainted with it as of 1911, that is, up to that time, but since then I haven't had very much information. I have not

(Testimony of J. C. Stevens.)

made a special inquiry regarding it, no, I haven't, since that time?

Q. Who was operating the property in 1911? Was it the Hanford? [636]

A. Hanford Irrigation and Power Company, I think, at the time.

Q. You don't know how they happened to lose possession or ownership of the property?

A. No, not except by hearsay evidence, just by hearsay.

Q. You don't know how the Black Rock Power and Irrigation Company, their successors in interest, happened to lose ownership of the property?

A. Except by hearsay.

Q. Do you know the price that the district was able to acquire that property for?

A. I don't know.

Q. You did not acquaint yourself with the past financial history of that property from the time it was built down to the time it was taken over by the irrigation district? A. I did not.

Q. Well, now, Mr. Stevens, in making a study of the fair market value of such properties as this property, don't you think it is very important that the past financial history of that property be taken into consideration?

A. I wouldn't think so.

Q. You wouldn't think so? A. No.

Q. You would ascribe any failure of successive ownerships to keep that property out of the red to poor management, [637] and not to the property itself, is that the idea?

(Testimony of J. C. Stevens.)

A. It might not only be poor management, but it might be political manipulations.

Q. Yes. Now, you took into consideration the earning capacity of that property?

A. Well, I made, for my own purpose I made an estimate of the earning value of that property, with certain improvements in the canal that would be required.

Q. You took into consideration the earning capacity of that property if money was expended to put it into a different condition than it was in?

A. I did not give that very much weight.

Q. All right; now, just what did you find that property had earned for 1942 and prior years?

A. I don't know.

Q. You don't know what it was?

A. I don't know what it had earned, no.

Q. Did you take into consideration the cost of the operations of that property? A. Oh, yes.

Q. Did you inquire to find out what those costs were?

A. No, I made my own estimate of what it should be.

Q. Did you take into consideration the cost of upkeep of that property? A. Yes. [638]

Q. Did you inquire what it had been necessary to spend to keep that property up through the years? A. No, I made my own estimate.

Q. In other words, you just did not feel that the past history of that property as to any item was worth a study in reaching that valuation?

(Testimony of J. C. Stevens.)

A. Oh, I wouldn't say it was entirely valueless, but I did not have the information in all its details, and I did not think it was of sufficient weight to try to find out about it.

Q. Yes. Now, you were employed by the district as an attorney, were you not?

A. Beg pardon?

Q. You were employed by the district as a witness in this case, were you not? A. Yes.

Q. And any information which the district had would have been available to you on request, wouldn't it? A. I presume it would, yes.

Q. But you did not make the request?

A. No, I did not make the request.

Q. On what dates were you at the power plant and on the power line and on the irrigation system for examination of those properties, Mr. Stevens?

A. Well, I was at the Priest Rapids Power Plant on September [639] 1, 1946. At that time, the same time, we rode along the power transmission lines. I did not go down to the Coyote station at that date. I was at the Coyote Pumping Plant on January 31, 1947. I beg your pardon, I think that was January 30.

Q. And how many hours would you say you were at the pumping plant on that date?

A. On January 30th?

Q. Yes.

A. Oh, an hour and a half, maybe.

Q. And how many hours were you at the power plant on September 1?

(Testimony of J. C. Stevens.)

A. I was there most of the day, maybe six or seven hours, six hours.

Q. And those were the days on which you made your physical inspection of the properties?

A. That's right.

Q. When did you make your physical inspection of the distribution system of the District?

A. Well, most of the distribution system was obliterated at the time, that is, it had been put out of commission. The ditches and canals were full of tumble-weeds, and I did not follow the route of all of them. We crossed them at a good many places, and I examined them at those points. I had been over them, of course, in 1911, knew [640] them fairly well.

Q. Well, on what date was it that you viewed the ditches and canals and laterals?

A. Well, that was on the same date that I examined the power plant. We spent the entire day on the project, on the 1st of September.

Q. When you went up to the power plant, you examined the canal?

A. Well, I examined it at points where it could be seen from the highway.

Q. Well, let me put it this way. You made an inspection of the canal on that date?

A. At certain points.

Q. At the intake?

A. No, I did not go to the intake on September 1.

Q. You inspected the building?

A. The power plant?

(Testimony of J. C. Stevens.)

Q. Yes. A. Yes.

Q. And the installations?

A. And the installations, and the canal.

Q. Now, I don't suppose that in that short time, Mr. Stevens, you had time to make a careful examination of each piece of machinery there to determine its exact condition? A. No. [641]

Q. Or each piece of electrical equipment?

A. No, I did not. Of course, if one was going to make a critical examination of the machinery you have to un-water it and go down into the wheel, or pull the wheel out and examine those things, but I did not consider that was essential in this case, because whatever wear might occur to those parts, there would be no wear to any parts except the turbine, and that could be repaired, and it is repaired, by welding up any pitted portion or making general repairs to the bearings and things of that kind, and the depreciation to the condition that I have set out here is based on a depreciation entirely independent or rather, after this maintenance program could be carried out, the remaining depreciation that could not be repaired by reasonable amount of maintenance is the condition I considered that in.

Q. You did hear the statement of Mr. Yeager that when this power plant was taken over in the fall of 1943 by the Pacific Power and Light Company, that they found it immediately necessary to replace the governor on one of those turbines, as it was worn out?

(Testimony of J. C. Stevens.)

A. Well, the governor wasn't there in '46, when I was there, and not in '43, I am informed, and I examined the equipment that was there in '46, and made inquiry as to when it was installed, so that I was satisfied it was there [642] in 1943. I know the history of what happened, of course.

Q. Well, now, the thing I am getting at is this, Mr. Stevens: You ascribe a certain value with a certain depreciation to the equipment that you found in the plant. Did you know then, or at any time that you made up your figures, your computations, that the new governor, or the governor that had only been in the building therefor about three years, had been installed by the Pacific Power and Light Company, and not by the District?

A. No, I didn't know who installed it.

Q. So that you have run through your figures here a value on that governor, which I think Mr. Tinling valued at \$5,000.00, you didn't know that that actually was not the governor that was in the property at the time it was taken over by the government?

A. In 1943?

Q. Yes.

A. I was under the impression that that is the governor that was there in 1943. The old governor that they put in first was replaced at some time, and I was under the impression it was prior to 1943. However, as I understand it, the Pacific Power and Light Company had leased the property, and I assume any improvements they had made would be reimbursed to them by the District.

(Testimony of J. C. Stevens.)

Q. Well, you know, do you not, that the government actually [643] took over that property and acquired title to it in May of 1943?

A. Yes, but the governor that is listed in Mr. Tinling's list, as I recall it, is the Woodward governor that is there now.

Q. That's right.

A. It was there in 1943.

Q. I don't see how that follows, exactly.

A. Well, Tinling's estimate was made as of October, 1943, that is, his inventory, and if this new Woodward governor is in that inventory, it presumably was there in 1943.

Q. Well, you did hear the testimony of the witness Yeager that that governor was put in there after the Pacific Power and Light Company took it over on lease from the government?

A. Well, I don't know when that was; I don't know when the lease was taken over from the District. I don't recall any testimony from Yeager or anybody else that that governor was not there in 1943.

Q. You recall the testimony of Mr. Yeager that they replaced the old, worn out governor after October 1, 1943, with a new governor?

A. No, I don't recall that.

Q. You don't recall that?

A. I was under the impression it was replaced prior to 1943, [644] October.

Q. Yes. Now, do you recall the testimony of Mr. Yeager that when they took over that plant

(Testimony of J. C. Stevens.)

they found it necessary to rewire for reasons of safety?

A. Well, I presume that certainly the installation of any new equipment, replacement of one unit, would require quite substantial changes in the wiring system. The old unit that this replaced, the first one they put in was a new propeller wheel with the old generator on it, the old number 2 generator, which is identical with unit number 1, but something happened to that, so I am informed; the unit blew up, and it wrecked that generator, and then they had to replace it with that new General Electric generator.

Q. That was back in 1937?

A. Somewhere in there.

Q. But I'm referring now to the testimony of the witness Yeager, in effect, that when the Pacific Power and Light Company took that property over under lease, they found it necessary to rewire generally throughout the power house there, for reasons of safety; that a portion of the—I think he said a portion of the wire was not insulated, there was no protection from it.

A. Well, I don't know the details of that, but my belief is it was rather a minor operation. [645]

Q. Yes. Now, in your item here for wiring—

A. No item for wiring in my estimate.

Q. I say, in your item for wiring, here, are you setting up the new wiring that was done by the Pacific Power and Light Company, or is your item on the old wiring that they replaced?

(Testimony of J. C. Stevens.)

A. No, that is the wiring as I understood it was there in 1943.

Q. When did you make your inspection for the purpose of placing your values on this property?

A. In September 1, 1946, and also in January, 1947.

Q. Well, now, if the Pacific Power and Light Company when they took this over in the late fall of 1943 actually rewired that power house, or a portion of it, or any part of it, that rewiring job that was done at that time is reflected in your figures here, isn't it?

A. Well, that is the reason I placed a 60 per cent condition on it, because it was not new equipment, no new wiring. That 60 per cent condition was intended to take care of any of the lessening of serviceability that would result from its use, and I assume that a lessee would be compensated, of course, by the District, for anything—

Q. Well, now, let's get this through our mind. You have made certain assumptions here, Mr. Stevens. The District lost title to these properties in May, 1943, and it did [646] not belong to them after that date. If you're right in your assumption that any sums that was spent by the Pacific Power and Light Company it had been reimbursed for, it wouldn't be by the District, because the District no longer owned the property; the government owned the property.

A. Well, if they made anything prior to the time it was taken over by the government—I don't

(Testimony of J. C. Stevens.)

know when the lease with the Pacific Power and Light Company was made. I did not inquire as to the date of that.

Q. Well, the testimony of Mr. Yeager was that the Pacific Power and Light Company lease this property and took it over on October 1, I believe, 1943, and that lease was with the government, not with the District.

A. Yes, that was with the government.

Q. So if you've gone forward on this matter on the assumption that anything that was put in there new, or any repairs that was made by the Pacific Power and Light, became the property of the District, because the District reimbursed the P. P. and L., then your assumption is erroneous.

A. Well, they're minor items, and they wouldn't affect the valuation of the property, anyhow, as I've set it out.

Q. Well, they may be minor items in the final value you set on this property, but I wouldn't say that \$5,000.00 for a governor, or several thousand dollars for a wiring job, [647] was too minor to be considered. Now, I assume, Mr. Stevens, that you had access to all of the quotations as to the price of electrical machinery and generating equipment that was available to Mr. Tinling?

A. Well, not to quite the extent. He's a contractor in that business particularly, and we're not contractors in electrical work.

Q. That's right.

A. The prices, of course, the published records, are available to us, of course.

(Testimony of J. C. Stevens.)

Q. Mr. Tinling I believe testified that he was a member of an electrical supply firm?

A. I think so.

Q. And you feel, then, that he should be very well acquainted with the actual cost price?

A. I feel this way, that if I had undertaken to value every bolt and screw and brace and thing that was there, like he did, that I would have had to get someone on electrical supply equipment in my office, because I didn't have the time to do it personally, and I could not think of anyone I'd rather trust than Mr. Tinling.

Q. All right, then let's make a comparison of the values you have placed, not on the nuts and screws and bolts, but on the important items of electrical equipment and machinery in the power house there, and the price Mr. Tinling says [648] they could have been replaced new for. Let's take generating unit number 1, on Mr. Tinling's tabulation; \$24,000.00 for the generator, \$32,000.00 for the triple impeller wheel, \$5,000.00 for the rotary oil pump, making up the whole unit, or a total of \$61,000.00. Now, let's turn to your values, your replacement values, placed on the same item. You have given a single item of \$75,000.00, or \$14,000.00 more than Mr. Tinling says he could have replaced that unit for, brand new, as of the date of the taking.

A. Well, Mr. Tinling doesn't handle that unit, nobody handles it any more. It is an old unit of 1908 that isn't built any more.

(Testimony of J. C. Stevens.)

Q. That's right.

A. But if it had to be replaced in 1943 I don't believe you could acquire the unit, take it there, and make the installation for less than \$75,000.00. The unit has three turbine blades in it, three turbines in it.

Q. And as a matter of fact it would be more efficient if instead of the three blades, it had a rotary wheel?

A. A propeller wheel, yes, with adjustable blades, however.

Q. Actually a propeller wheel would be more efficient than the triple wheel that they have installed?

A. Yes.

Q. So you could replace it with more efficient parts, so far [649] as the wheel itself is concerned, for less money, couldn't you?

A. Yes, but that of course wouldn't be replacing this unit.

Q. No, not the exact unit, but you could replace it with a more efficient unit throughout for less money than that, couldn't you?

A. I'm not so certain you could.

Q. You have made no deductions, here, Mr. Stevens, for obsolescence?

A. On that unit?

Q. On that unit.

A. Oh, yes, that is mostly what the 60 per cent condition is for.

Q. Obsolescence?

A. Obsolescence, largely obsolescence. I think the unit has just the same serviceable value it did

(Testimony of J. C. Stevens.)

when it was put there; the kilowatts are certainly just as good, that it makes, but it isn't a very efficient unit, and my belief is that if it was continued, in time they would want to replace that with a propeller unit, but I don't think they would get it in for a less sum than that, that is, couldn't at that time.

Q. Now, we've got a condition of obsolescence there that you figure if a commercial company was taking that over for the generation of power, now or sometime in the not too [650] distant future, they would want to replace the whole set-up?

A. No, not the whole set-up. My feeling is that if the canal system were enlarged so you could get in a sufficient quantity to operate those units at full capacity, that the time would very likely come that they would want to replace that unit so they would get a more efficient machine, and get a larger number of kilowatts than they're getting out of the old unit, and therefore it would be justified.

Q. You certainly wouldn't advise a client of yours to pay \$75,000.00 for that generator and wheel at the present time, would you, if he was buying one? A. No, I wouldn't.

Q. And you wouldn't feel like advising him to pay \$45,000.00 for it either, would you?

A. Well, if you were buying the whole plant, that would be a reasonable value, I imagine, because it is certainly producing \$45,000.00 worth of kilowatts right along.

(Testimony of J. C. Stevens.)

Q. These generators and wheels do wear out eventually, don't they?

A. I know of very few of them that have actually worn out. The general plan of maintenance involves the repair of the bearings and the welding up of the parts that are worn in the blades or the turbines, and any other repairs [651] that can be made are usually made, and in that regard the depreciation would not apply to the unit from the standpoint of wear and tear, only when the cost of maintenance gets entirely beyond reason, and this is largely an obsolescence condition or depreciation that I have used here, out of date, outmoded inefficient.

Q. Well, let's pass on to generating unit number 2. Mr. Tinling says that that can be replaced new for \$27,000.00 for the generator, \$32,000.00 for the propeller type wheel, and \$5,000.00 for the governor, or a total of \$64,000.00. Turning now to your tabulation, I find that you have put, instead of \$64,000.00 as a replacement cost of that unit, the sum of \$82,000.00, or \$18,000.00 more than Mr. Tinling says it can be replaced brand new for.

A. Yes. I obtained prices for the propeller type of unit and the generator from S. Morgan Smith Company. They make propeller type units, and they quoted me a price in 1943, if I can find it here, they quote me a price on the generator of \$23,940.00; for the water wheel, with fixed blade propeller of that capacity, \$37,600.00. That would include the governor. Total cost, \$61,540.00 at the site. Now, that unit had to be transported into the power house

(Testimony of J. C. Stevens.)

and erected, with a lot of alterations in the concrete work, and I added one third, which is a very reasonable price, to the cost of the unit itself for the [652] cost of installation, making in round figures, \$82,900.00.

Q. Let's move on to the next item, the exciter, appearing under number 4, page 2, of Mr. Tinling's compilation here. Allis Chalmers vertical exciter, 120 volt. Mr. Tinling says that can be replaced brand new for \$3600.00 as of 1943. Your item here shows \$5300.00, I believe. A. Yes, \$5300.00.

Q. Or \$1700.00 more than Mr. Tinling shows?

A. Yes.

Q. Now, on the exciter motor generator set.

A. I placed a price of \$3500.00 on that.

Q. Mr. Tinling's item there shows a price of \$2100.00 that he says he can replace that brand new for.

A. Well, my judgment is you couldn't, new.

Q. Now, turning over to page 8 of Mr. Tinling's compilation, under 2, pumping plant, Allis Chalmers 450 horsepower motor, which I assume is the same item shown under your breakdown under 7, pumping plant equipment, motor, Allis Chalmers, 450 horsepower.

A. Yes, they're the same unit.

Q. There are two of those motors, I think, shown in each item? A. Yes.

Q. Both Allis Chalmers. I note that Mr. Tinling places a reproduction cost new on the two motors of \$20,000.00, [653] while you place a reproduction cost new on the two motors of \$50,000.00.

(Testimony of J. C. Stevens.)

A. Yes. Well, I think if they were to be replaced now you would have to pay \$50,000.00 for them to get them installed.

Q. Going down to the next item, General Electric 675 horsepower motor, I note that Mr. Tinling says that that could be replaced new for \$11,000.00; you have entered an item there of replacement new of \$15,000.00.

A. Yes, I got prices from local dealers there of units of comparable design, with General Electric motors and variable speed pumps. The price on the motor at the site was \$10,630.00, and the pump was \$7,000.00, installation \$5870.00, about a third of that purchase price at the site, making a total of \$23,500.00, and I've used—I don't think I used that value, exactly; I used \$15,000.00. Now, whether that doesn't include the pump—I used \$26,000.00 for the pump and motor.

Q. You based your estimate of the replacement cost on figures furnished to you by some local dealer in Portland?

A. Well, it was a dealer of the same type of unit; it was a General Electric unit, and S. Morgan Smith pump.

Q. Let's go on to the matter of the pumps, here.

A. Beg pardon?

Q. Let's move on the items of the pumps. Now, I'm asking [654] you to keep very close touch with these items for this reason, that this is unfamiliar stuff to me, and I may get mixed up. If the items

(Testimony of J. C. Stevens.)

I'm referring back and forth are not identical will you please call my attention?

A. Yes, we'll try.

Q. I note here in Mr. Tinling's compilation a 35,000 gallon per minute pump, \$5,000.00; a 28,000 gallon per minute pump, \$3500.00, and in your compilation one pump set-up at \$15,000.00 and one pump set-up at \$10,000.00, for a total of \$20,000.00. Now, are those items identical?

A. No, the two pumps, Allis Chalmers pumps, are the two old pumps, and I set the price up there \$10,000.00 each. There's two of them. That would make the \$20,000.00.

Q. Now, are those two old pumps that you set up at \$20,000.00 the same pumps that are shown by Mr. Tinling as a total of \$8,500.00?

A. Well, let me check this. He's got two 35,000 gallon per minute pumps, that's those two old ones, at \$5,000.00.

Q. Oh, he runs the two old ones through at a total of \$5,000.00? A. Yes.

Q. And you run those two old ones through at a total of \$20,000.00, is that correct?

A. That is right, new.

Q. Well, I believe Mr. Tinling testified he was giving the [655] replacement price new on all of this equipment.

A. Well, I'm sorry, but \$5,000.00 wouldn't hardly pay the freight on them.

Q. I see. Now, he has listed here one 28,000 gallon per minute pump, \$3500.00, and you have

(Testimony of J. C. Stevens.)

listed one 28,000 gallon per minute, centrifugal, 60 foot head, \$6,000.00. Are those the same items?

A. Yes, that is a new pump, a variable speed pump.

Q. He has listed here a 2 cylinder Buffalo Pump Company reciprocating pump for \$750.00. You have a 2 cylinder reciprocating 15 horsepower pump.

A. Buffalo Pump Company, this is the vacuum pump for priming the two large pumps.

Q. What is your value on that?

A. \$2,000.00.

Q. \$3,000.00 item? A. \$2,000.00.

Q. His value is \$750.00? A. \$750.00, yes.

Q. 5 horsepower vertical motor driven pump and starter, is that the same as your pump and motor for hydraulic valves?

A. Yes. He has a price of \$175.00, and I have \$800.00, because I saw places for two pumps there, two outfits, and he only had one listed. Now, it might be a mistake, but the pumps had been taken away, and all I could find at [656] the time was the place where they had been installed.

Q. You did not see the pumps at all?

A. No, the pumps were not there.

Q. So your value just replaces a couple of pumps you assumed were there, and you assumed what the pumps were?

A. Yes; the pumps were given by Mr. Tinling as 5 horsepower motors with pumps, each, but I found a place that identified them as two pumps there instead of one.

(Testimony of J. C. Stevens.)

Q. So you relied on his listing to that point and then you decided he was in error, and added an extra pump, is that it?

A. I didn't add an extra pump. I saw a place where one should have been.

Q. Well, you added an extra pump to his list?

A. I added an extra pump because I thought he made an error in omitting one pump, where there was two.

Q. I see.

The Court: We'll recess now, Mr. Ramsey, until 1:30.

(Whereupon the Court took a recess in this cause until 1:30 o'clock p.m.)

Yakima, Washington, February 14, 1947,
1:30 o'clock p.m.

(All parties present as before, and the trial was resumed.) [657]

Cross-Examination
(Continued)

By Mr. Ramsey:

Q. Now, Mr. Stevens, going on with our comparison, I notice an item in your breakdown here of a travelling crane, a 10 ton crane, that you have listed at a replacement price of \$3600.00. That is in the Coyote plant, the pumping plant?

A. Yes.

(Testimony of J. C. Stevens.)

Q. I believe you stated that you adopted Mr. Tinling's value and replacement cost of the 10 ton crane shown as a part of the power plant equipment? A. Yes.

Q. Which was listed at \$3600.00?

A. \$3600.00, yes.

Q. Mr. Tinling, however, lists the replacement cost on that particular travelling crane down at the pumping plant at \$3200.00? A. Yes.

Q. You did not adopt his value on that travelling crane? A. No.

Q. Why?

A. Because the cranes, as near as I could tell, are the same capacity, the same size.

Q. Well, they are not manufactured by the same company, are they?

A. I couldn't tell the name of the manufacturer. It is [658] plainly marked on the one in the power house, but not on the one in the pumping plant.

Q. There might be some structural differences in the cranes? A. Might possibly be.

Q. Mr. Tinling thought he could replace the one at the pumping plant, new, at a price of \$3200.00, and you didn't agree with him?

A. No, not the one at the pumping plant.

Q. And while you accepted his figure on the other crane, you did not accept his figure on this crane?

A. I accepted his figure because I thought that was the right figure, and it applied to both units.

(Testimony of J. C. Stevens.)

Q. In other words, you thought he was right as to the one crane, but not as to the other?

A. Well, that is his judgment. This other was my judgment.

Q. I see. Now, going on to the power line, I note that you have an over-all total on that power line of \$134,550.00.

A. Well, that includes the power line, the substation at Priest Rapids, the substation at Coyote, six transformers, circuit breakers, switches, and all of the accessories for both substations. That is the transmission line and substation, item 5.

Q. I have not totalled up Mr. Tinling's total on that, but it consists of items of \$40,930.60 for the poles and insulation, \$5,315.20 for the anchor structures, \$500.00 [659] for the switch structure at the junction, and \$34,200.00 for the wire and accessories, and an item of \$4997.00 for stringing the wire, and a further item of \$270.00 for the storage batteries for the alarm system. If my computation is correct that is a total of \$86,212.80. I am not able to tell from your compilation here just where the differences in replacement values arise, but do you agree with Mr. Tinling's figure of \$40,930.60 for the poles set-up?

A. The only thing I took from him was the length of the wire, the quantity and the length of the line.

Q. Other than that you're in disagreement with him all the way through as to the replacement installed?

(Testimony of J. C. Stevens.)

A. Oh, I wouldn't disagree with him. I simply made an average price of \$5500.00 a mile for the transmission line. He valued each individual little part and got a little slightly different value, that's all.

Q. Well, it makes a difference in value as I figure it here of about \$48,437.00.

A. Difference?

Q. Your total, I believe, is shown as \$134,550.00.

A. Of the transmission line?

Q. Yes.

A. The transmission line is \$88,000.00; the substations at Priest Rapids, and also at Coyote, spare parts, add up to [660] \$134,550.00 for all of them, including the overhead.

Q. Well, I may be entirely wrong, Mr. Stevens, but what items are included in your tabulation that are not included in Mr. Tinling's?

A. Well, Mr. Tinling's item 8, on page 4, the power line, 16 miles, is the sum of those 1, 2, 3, 4, 5, 6 pieces there; probably that's the figure you added up and got somewheres around \$86,000.00. Now, my comparable figure would be \$88,000.00, and then for the substations, the Priest Rapids substations, on his page 1, he's got 4 items there, and they are separately included, for which he has about \$16,000.00; I have \$15,325.00, I think, for that substation, and then there is a substation at Coyote, too, that is included in that item 5 of mine. I don't know what page that is on in his.

Mr. Powell: Pages 7 and 8.

(Testimony of J. C. Stevens.)

A. Yes, the substation at the Coyote Pumping Plant. He's got about, roughly, there, about \$18,000.00, where I have \$11,975.00.

Q. Well, as a matter of fact, his figures on the Coyote Pumping plant substation amounts to about \$12,000.00, doesn't it? A. Roughly, yes.

Q. And you have an item of \$11,975.00?

A. \$11,975.00. [661]

Q. Now, the total of his items for the substation at the plant, at the power plant, is about \$15,325.00, isn't it?

A. Around \$16,000.00, without adding it up in detail.

Q. Making a total, then, of his figures for the power line and substations of about \$113,000.00, a little better?

A. Yes, for which my figure is \$117,000.00.

Q. Now, could the witness be furnished with a copy of exhibit number—I don't know what the number is.

Mr. Powell: Mr. Hall's?

Mr. Ramsey: Mr. Hall's, yes.

Clerk: Number 11.

Witness: I have a copy here.

Cross Examination
(Continued)

Q. I note that on the excavation of the power canal Mr. Hall has a total replacement cost of \$141,840.00, as against your total of \$259,400.00.

A. No, as against my cost of \$225,600.00. You see, he has no——

(Testimony of J. C. Stevens.)

Q. Mr. Hall hasn't charged off any 15 per cent item for legal, engineering, and incidental expenses?

A. He's got his legal and engineering at the end. It is not included in his tabulation of the power canal.

Q. Then his total of \$141,840.00 covers the same items as your subtotal of \$225,600.00?

A. Yes. [662]

Q. I notice that Mr. Hall has fixed his per cubic yard figure for the excavation of 65 cents per cubic yard on the original portion of the canal excavated, and 57 cents per yard on the subsequent excavations, whereas you have run the whole thing through on the basis of \$1.00 per yard? A. Yes.

Q. That makes up the difference?

A. That makes up the difference.

Q. In other words, you accepted Mr. Hall's as to the total number of yards, and the difference in the two figures is explained by the difference in the amount which each of you have estimated that work could be done for? A. That's right.

Q. Now, moving on to the generating plant structure. Am I correct in assuming that you have accepted Mr. Hall's figures as to the total number of yards of excavation involved in that, and the type of excavation?

A. I have, yes, that is correct.

Q. So the difference between your subtotals as to the cost of the generating plant structure of \$138,900.00 and \$212,000.00 is accounted for by the fact that Mr. Hall fixes a price of \$4.00 per cubic yard

(Testimony of J. C. Stevens.)

for the excavation of rock as against your price of \$5.50 per cubic yard for that type of excavation, his price of \$30.00, I assume that is per yard, for concrete, and 6 cents per pound on [663] 60,000 pounds of re-enforcing, as against your figure of \$50.00 per cubic yard for re-enforced concrete, is that correct?

A. Yes; of course——

Q. And there's some further items there, the tail gates and the bar screens and residences and things of that sort.

A. That is substantially correct. I also included all of the trim and doors and miscellaneous parts of the building, and roof, and so on, that he didn't include separately; threw it all into the price of the concrete. Presumably his \$30.00 and the re-enforcing also includes all those items.

Q. Yes, his item, \$30.00 per cubic yard for concrete as against your price of \$50.00 per cubic yard for re-enforced concrete, involved other items.

A. You would have to add the re-enforcing to his figures.

Q. His figure of \$3600.00 for re-enforcing for the concrete. Now, on the Coyote Pumping Station structure. Again there did you adopt and accept Mr. Hall's yardage of materials, both excavated and used? A. Yes.

Q. Then the difference in your subtotal of \$73,020.00 as compared to his total of \$36,940.00 would be explained by the fact that he has fixed \$2.00 per yard as the cost of excavation as against your figure of \$4.00 per yard [664] for the same type of ex-

(Testimony of J. C. Stevens.)

cavation, that is, the 4,000 cubic yards shown in the first line? A. That is right.

Q. And your price of \$50.00 per yard for concrete as against his price of \$30.00 per cubic yard for concrete, plus a total item of \$800.00 for reinforcement?

A. That's right; there is also a difference of—

Q. I believe also that your total shows an item of \$16,100.00 for the discharge pipe as against his item of—well, I can't read that figure on this copy at all.

A. No, the discharge pipe is in the next item. I think I have it in one item and he has it in the other.

Q. Well, he has a discharge pipe listed here, I think, if you will note on the 5th item there, you will find the item, discharge pipe.

A. I see, yes, \$4900.00.

Q. As against your item of \$16,100.00?

A. Yes, that is right. Of course, his price, as I understood him on the stand, was reproducing in kind, as it was at that time, and mine was new, less depreciation.

Q. Yes, your price is based on reproduction in kind less depreciation.

A. No, reproduction new less depreciation.

Q. Well, what would be the distinction between reproduction in kind less depreciation and reproduction new less depreciation? [665]

A. Well, if I understood him, his reproduction in kind was reproducing it at the condition in which he found it. That is my understanding. You see, he took no depreciation off his list.

(Testimony of J. C. Stevens.)

Q. Yes, I distinctly remember there was no depreciation taken off his list.

A. Maybe I misunderstood him. To me, reproduction in kind would be to reproduce it as of the condition it was when he made the valuation, made the study. That is my conception of it. Maybe I'm wrong.

Q. Well, I'm not going to argue with you about that. You heard the testimony.

A. Well, I feel pretty certain that you couldn't put in that 72 inch pipe line for \$4200.00 new.

Q. About how long was that pipe line?

A. Oh, I judge it is about 200 feet, maybe, something like that.

Q. And that was a 72 inch wood stave pipe, wasn't it? A. Yes.

Q. And your best judgment of the cost of replacing that pipe in 1943 would be sixteen thousand and—— A. \$16,100.00.

Q. \$16,100.00, or \$16.10 per foot—no, I believe you said 200 feet, that would be \$8.05 per running foot, of 72 [666] inch wood stave pipe?

A. Yes—that's about \$80.00 a foot.

Q. Yes, I was just figuring that myself. That would be about \$80.00 per running foot for a 32 inch wood stave pipe?

A. No, 72 inch; six feet in diameter.

Q. Oh, 72 inch wood stave pipe. Did you get any prices on that wood stave pipe?

A. No, I did not.

(Testimony of J. C. Stevens.)

Q. You just estimated it?

A. I estimated it, yes. Of course, that includes all the excavation, and all the things that would go with it.

Q. Well, now, that wood stave pipe, Mr. Stevens, was not buried very deeply in the ground, was it?

A. Of course, it wasn't there when I saw it; in 1911 it was buried. The wind may have blown it.

Q. I hand you a photograph, Mr. Stevens, and ask you if that represents about your conception of the amount of excavation that was involved in laying that wood stave pipe?

A. Very likely, yes, if this is it; presumably it is.

Mr. Ramsey: I might say to the Court that this photograph will be offered in evidence later, after it has been properly identified.

The Court: Shouldn't it be identified now, so that we'll know you're talking about the same one? [667]

Mr. Ramsey: I don't know how I am going to identify it without calling a witness for that purpose.

The Court: I didn't mean identified; I mean marked.

Mr. Ramsey: Oh, I'm going to offer it as government's "A" for identification.

(Whereupon, photograph of part of 72 inch pipe line at pumping station was marked Plaintiff's Exhibit "A" for identification.)

(Testimony of J. C. Stevens.)

Cross-Examination

(Continued)

Q. Moving on to the irrigation system now, Mr. Stevens, which I believe is on page 2 of Exhibit 11, again I believe you have accepted Mr. Hall's estimate of the number of cubic yards of material involved in the excavation for the ditches and laterals and canals there? A. Yes.

Q. And the total number of yards of excavation required for the works?

A. Yes, I have accepted that.

Q. Under excavation, common, 266,000 cubic yards, I note that Mr. Hall figures a price of 15 cents per cubic yard, as against your price of 35 cents per cubic yard. A. That is right.

Q. Under loose rock and gravel, 74,000 yards, a price of 30 cents per cubic yard, as against your price of 60 cents per cubic yard? [668]

A. That is correct.

Q. And concrete transitions, 200 cubic yards, at \$20.00 per cubic yard, I presume that is?

A. Yes.

Q. As against your price of \$50.00 per cubic yard for concrete? A. That is correct.

Q. This is not re-enforced concrete, is it?

A. Beg pardon?

Q. This is not re-enforced concrete, is it?

A. Well, it isn't so marked by him, and I'm not certain whether they put re-enforcement in those head walls or not.

(Testimony of J. C. Stevens.)

Q. In any event, you used the same price per cubic yard as you used for the building of the power plant and the pumping plant? A. Yes.

Q. You accepted Mr. Hall's estimate of \$1500.00 for gates and checks—spillways, that is, spillway gates and checks?

A. Apparently I did, yes. Yes, I thought that was a fair figure for those items.

Q. Now, under the lateral system Mr. Hall has a lump sum figure of \$9,000.00. Is that the same item as your figure of \$30,000.00?

A. I think it is, yes. [669]

Q. Then you have added, of course, miscellaneous and omitted items? A. Yes.

Q. Which doesn't appear in Mr. Hall's breakdown? A. That's right.

Q. That item has appeared in every subdivision of your estimate, I believe, appearing as—no, I think I'm wrong on that, Mr. Stevens.

A. It appears in item 8, the irrigation system, and in item 4, the generating equipment.

Q. Yes, you have a miscellaneous and omitted item under 4, generating equipment, of \$3,000.00, which doesn't appear in Mr. Tinling's estimate.

A. That's right. Well, I think there is a part of his items, miscellaneous, that are there. He's got some items listed.

Q. I think that is correct. I think I noted there was a telephone line which he put in at \$170.00, and some wiring, perhaps, that you have not listed separately? A. That is right.

(Testimony of J. C. Stevens.)

Q. Now, under your pumping equipment at Coyote, under 7, you have an item of wiring, omitted items, and miscellaneous, of \$6,000.00?

A. Yes.

Q. And under 8, the irrigation system, you have a miscellaneous [670] and omitted item of \$3,000.00?

A. That is right.

Q. That you simply added to cover the possibility that you missed items that should have been included?

A. Yes, and items that are—yes, miscellaneous items that are not listed, and in making up an inventory of that kind one seldom gets more than there is; there is always something less; there's items generally left over, and it is a common thing to put in some small sum for miscellaneous and omitted items from the inventory.

Q. You have a total of \$12,000.00 added to your estimate on that item, haven't you, altogether, \$3,000.00, \$6,000.00, and \$3,000.00?

A. Correct, \$12,000.00.

Q. And that is simply in case you should have missed anything that should properly have been charged up, to make sure that you have charged plenty, is that the general idea of the item?

A. The general idea of the item is to cover items of a miscellaneous nature that may have been omitted, just what it says.

Q. Now, in this item legal and engineering, I find that Mr. Tinling has used an 8 per cent addition

(Testimony of J. C. Stevens.)

to cover that. You have used a 15 per cent addition to cover that, is that correct? [671]

A. It covers more items than he has included.

Q. Well, he apparently covers his item in this manner: "Engineering, legal, and so forth" 8 per cent, and you set it up as overhead. Now, what is covered by the item "overhead" that isn't covered by the item "Engineering, legal, and so forth"?

A. Well, I don't know what he meant by his "and so forth" but my items of overhead would include engineering, legal expenses, financing expense, travelling expenses, automobile up-keep, office supplies, stenographic help, salaries of management and staff, maybe a manager and an assistant, all of the items that go into the creation of a project of this kind, that are of a completely general nature, not applicable or applied to any one unit thereof.

Q. Yes, you have assumed that it would be necessary in re-building this to finance it?

A. Why, yes.

Q. And for that purpose it would be necessary to run up certain charges to find the money and secure it?

A. Might very likely be.

Q. In fact, couldn't we say that your item covered everything that you could possibly think of that could be charged up against this situation?

A. No, it couldn't; I haven't charged up any going concern value; there are many other items that enter into a [672] reproduction cost that I have not included.

(Testimony of J. C. Stevens.)

Q. You think 15 per cent is a fair amount to be added for these various items?

A. Yes, I do. In substantiation of it, mention was made here of the 308 reports by the government. Some of those I had something to do with, as I was consultant for the Army while that was under way, and they have charged 12½ per cent for projects that run up between 60 and 100 million dollars.

Q. That is irrigation projects, isn't it?

A. Power and irrigation, that sort of thing.

Q. That isn't a matter of putting up some structures or digging ditches; that is all of the incidental costs that would be involved for an irrigation district, in putting in an irrigation system?

A. You mean that 12½ per cent?

Q. Yes.

A. No, that is the item of overhead that I have covered.

Q. For an irrigation district?

A. No, for the high and low dam at Priest Rapids, Grand Coulee, Foster Creek, the Umatilla Project, Bonneville—all of those estimates that were made carried a 12½ per cent overhead item to cover all those items of a general nature. On a large project of upwards of 60 to 100 million dollars the rate for overhead is somewhat less than it [673] would be for a small project of this kind, and if that is my measure of comparison, 15 per cent is about in line with that type of estimate, and then I've made a good many overhead estimates myself

(Testimony of J. C. Stevens.)

on the work that we've done. It runs very frequently up between 15 and 20 per cent; some places higher than that.

Q. You figure that a charge of \$31,800.00 is a fair charge to be made to cover these items in the building of the generating plant out there, this little concrete building that we saw out there?

A. I don't know where you find that figure. How much, \$39,000.00?

Q. No, under generating plant, number 3, generating plant.

A. Generating plant, under 3, yes.

Q. Overhead, \$31,800.00. A. \$31,800.00.

Q. And if you were putting up a concrete building comparable to that you would add to the other costs an item of \$31,800.00 to cover the factors that you have mentioned?

A. Well, there is more than just the building; there is the whole power site, and the plan of development, the original surveys, and all of the design work, and the actual construction, including the power canal, the acquisition and installation of the machinery, and all of the elements that go to make a project a going concern, [674] over and above the mere cost of the thing, is included as overhead.

Q. Now, you said there's all those items in there. Let's take acquisition and installation of machinery. Haven't you charged that against the machinery?

A. Yes; not the management of it.

(Testimony of J. C. Stevens.)

Q. Let's take all the elements of equipment for the project. Haven't you made that same charge against all the items? A. Yes.

Q. Then the \$31,800.00 applies only to the generating plant, doesn't it?

A. The power canal and the generating equipment and transmission lines.

Q. Just a minute. On your power canal you have an overhead of \$33,800 charges against that, that is 2. A. Yes, correct.

Q. Now, your lands and rights of way appears under 1, as a separate item of \$5,000.00, doesn't it?

A. What is your last figure? I didn't understand what you referred to.

Q. Items 1, lands and right of way, \$5,000.00.

A. Correct.

Q. Now, you have covered that by that item. Going down on the power canal alone, you have charged up an overhead item of \$33,800.00 on the power canal. [675]

A. There is no overhead item on the lands and rights of way.

Q. No, but what I'm objecting to is this, Mr. Stevens; you've listed the rights of way, and what have you, that was in your consideration in setting up this overhead. Now, under 1, you have made a charge of \$5,000.00 to cover rights of way and lands. Are you including that again as one of the factors in all these items where you have run up the overhead?

A. Certainly not.

(Testimony of J. C. Stevens.)

Q. You have charged against the power canal alone an item of \$33,800.00. A. Correct.

Q. And against the plant itself out there, that is, just the structure in which the power plant is located, an item of \$31,800.00?

A. Correct; 15 per cent on all of them.

Q. And as against the generating equipment in that power house, an overhead item of \$28,350.00?

A. Correct.

Q. And as against the transmission lines and substation, an overhead item of \$17,550.00?

A. That's right.

Q. And as against the Coyote Pumping Plant an overhead item of \$10,950.00? A. Yes, sir.

Q. And as against the pumping equipment in that pumping plant, an overhead item of \$17,550.00?

A. Yes, sir.

Q. And as against the irrigation system, an overhead item of \$27,560.00? A. That's right.

Q. Now, even after you depreciated that overhead item, and carried it into the depreciated value, you have actually charged up in this case as an item of overhead a total of \$133,360.00?

A. For that you've added up the sum of the depreciated overheads?

Q. That's right.

A. I haven't checked it, but I'll accept your figure.

Q. Then you've made a further charge of interest, amounting to \$31,000.00? A. Correct.

(Testimony of J. C. Stevens.)

Q. Interest during construction?

A. Correct.

Q. And then you have made a further charge for omitted items amounting to \$6,000.00?

A. Yes.

Q. Or a total charge against the properties taken under this proceeding, in addition to the cost of replacement and installation, of \$170,360.00? [677]

A. No, sir, that's part of the cost of replacement, included in the cost of replacement. It is part of the cost of replacements, and on a million dollar project that is not high.

Q. Now, let's get into the matter of this interest during construction. What does that represent?

A. Beg pardon?

Q. What does this interest during construction represent?

A. Just what it means, you have the project financed, money available that is not earning until the project's completed and in operation, and the interest on that has to be paid from some source or other.

Q. And that you figured at the rate of 6 per cent per annum? A. 3 per cent per annum, yes.

Q. Not 3 per cent per annum; 6 per cent per annum?

A. 3 per cent per annum for two years; one half of the rate of 3 per cent per annum for two years; you usually figure on interest during construction that your money is expended at a uniform rate, and the general practice is to take whatever interest rate

(Testimony of J. C. Stevens.)

you have, multiply it by the number of years, and divide it by two. This happens to come out as 3 per cent interest on the entire cost of the project.

Q. Now, you state that in capitalizing the earnings of this plant you capitalized on the basis of 3 per cent earning capacity? [678]

A. The net returns, the net income after paying all the annual expenses, was capitalized at 3 per cent, yes.

Q. Now, Mr. Stevens, isn't that a pretty low rate of capitalization?

A. Well, that's about the rate for public money nowadays, even higher than the government is paying in a good many instances.

Q. Government bonds carry about 3.9, don't they?

A. Well, some of them don't carry that much.

Q. Well, 2.9, I mean?

A. I haven't been getting anything over $2\frac{1}{4}$; maybe there are some.

Q. Don't you consider that there would be a slight difference in the security of a government bond as compared to the earning capacity of a plant of this character?

A. Well, I don't think the security of the bond enters into the picture at all. If one can get money for 3 per cent, and that's all I've charged up for interest on this, 3 per cent, why, then that is the normal rate at which the earnings should be capitalized.

(Testimony of J. C. Stevens.)

Q. Now, if 3 per cent is available, and it was available in 1943, I'll grant you that, is that true over a long period of time before and after?

A. No.

Q. Now, your capitalization must be over a long period of [679] time, must it not?

A. Well you figure the value of capitalized earnings as of the year in which that was done, because if the buyer would assume that the interest rate would be 3 per cent over the life of property, and he purchased it on that basis, after he has purchased it he finds it gone up to 5 or 6, why, of course, he's out of luck, that is, he's lost some money. If it goes down, he's a winner.

Q. Now, would the normal buyer, even in 1943, be willing to pay for a hydro-electric set-up of this character a figure upon which he could expect a return throughout the life of the plant of only 3 per cent, and assume his risk of whether that earning could be kept up to that point or not?

A. I did not set this up for a privately owned and operated system; it was a publicly owned and operated system, which was quite a different thing. If it was privately owned he would have to include taxes and other items, but this capitalization, as I say, I didn't give any, hardly any weight to it in my estimate of value, was assumed to be on a publicly owned property.

Q. Now, Mr. Stevens, if this publicly owned property is to be offered for sale, and sold, wouldn't the natural assumption be that the purchaser would be a private concern? [680]

(Testimony of J. C. Stevens.)

A. Not necessarily at all; we have many agencies in this Northwest ready to purchase property; there is the P. U. D., the R. E. A., and the Bonneville Administration, there, that might be in the market for it; there is plenty of public concerns that might be considered. If I may revert again to the 308 reports, they set up two bases, one for private developments, and one for public developments, and they have a little different interest rate.

Q. I can imagine.

A. My capitalized earning was based on public financing.

Q. When you answered counsel's question as to what you believed to be the fair market value of this property as of 1943, as between an informed buyer and an informed seller, did you take that question to mean what in your opinion is the value of this property if some agency of the government bought it?

A. Not at all.

Q. Or did you take it to mean what is the price of this property on the open market, to a prospective purchaser who might be anyone?

A. The value I placed was just what I said it was, fair market value for any purchaser at that time.

Q. Now, in figuring your net return did you deduct taxes? A. I did not.

Q. You assumed that it would be in the hands of a municipal [681] or government agency where it wouldn't be subject to taxes?

(Testimony of J. C. Stevens.)

A. Working out this capitalized earnings I did, but I say, I did not use that to any material extent, or for any weight, in my determination of value.

Mr. Powell: May I object, your Honor, to the questions on this matter, because it is not, as I understand the rule, what the condemnor gains, but what the condemnee loses, and this was a tax-free plant at that time, and it seems to me the questions counsel is asking presumes something not in the record.

Mr. Ramsey: I submit to the Court that in the matter of property the seller cannot assume——

The Court: I agree with you there, you can't assume any particular type of buyer. It might be any buyer, either public or private. That is my understanding of the rule here. I don't think a different rule applies where the owner is a municipal corporation.

Cross-Examination

(Continued)

Q. So in computing your net earnings, you did not consider that the plant when it passed into private ownership would necessarily pay substantial taxes out of its earnings?

A. I did not make any deduction for taxes in that calculation.

Q. Now, as a matter of fact, commercial power plant properties [682] are taxed, and taxed heavily, are they not? A. Yes, sir.

(Testimony of J. C. Stevens.)

Q. And that very materially affects their net earnings, too, doesn't it?

A. It certainly does.

Q. And if we were going to figure out the value of this property in the hands of a private purchaser, that tax item alone, if you were going to capitalize on net earnings, would have a very, very material bearing, wouldn't it, on the value of the property capitalized on the earnings?

A. Yes, it would, and also very likely if it was a private concern you could increase the income by a substantial rate for the income over what I used in my figures, too, which would off-set it.

Q. Well, now, what figures did you use in determining it?

A. I used 3 mills per kilowatt hour for the income.

Q. And what did you base that on?

A. Well, that is a very low rate, I should think, for firm power. A good many sales, Bonneville is selling dump power at $2\frac{1}{2}$ mills.

Q. Yes.

A. And this isn't dump power; this is firm power; quite different.

Q. Yes.

A. I assumed it would be wholesaled at 3 mills; could be [683] retailed and distributed, probably, for 7 or 8 mills.

Q. Just a minute; we're not going into the retailing and distribution business. We're dealing now with a hydro-electric plant, and as a matter of

(Testimony of J. C. Stevens.)

fact, right out in the immediate vicinity of this plant there is a Bonneville substation, isn't there?

A. Yes.

Q. And was in 1943? A. Yes, sir.

Q. And in the sale of your power from this plant you would have to compete directly with the sale of Bonneville power in the same locality, wouldn't you? A. Well, you might and you might not.

Q. Well, the power is there, isn't it, available?

A. Yes; not in this quantity; not in those small rates, not in small quantities. A 240,000 volt line has come in there, and they're not retailing any power from that system, as I understand it.

Q. Well, now, as a matter of fact, and it is a fact, isn't it, the Bonneville Power Administration is retailing power to every village, every town, that there is on their lines, and building lines to take it there, isn't that a fact?

A. No, they are not.

Q. Well, where is an instance that they haven't done so? [684]

A. We've been trying to get Bonneville power at a gas ice plant I'm interested in on the Klickitat River for four years, and I haven't been able to get it yet, and that's a P. U. D. there, too.

Q. That isn't a private village, even, is it?

A. There is a town of Klickitat, and surrounding communities.

Q. Has the P. U. D. made application for power from Bonneville?

A. Oh, yes, several years ago.

(Testimony of J. C. Stevens.)

Q. And they haven't received it?

A. They haven't received it.

Q. Why?

A. Bonneville hasn't delivered it; they've been expecting it right along.

Q. Your difficulty is not that the Bonneville refuses to deliver, but that the Bonneville has not been able to construct to the point where they can deliver it?

A. Five years now.

Q. And there's been a war during that whole period, and during that time Bonneville was shut down, wasn't it, from further extensions?

A. That's correct.

Q. As a matter of fact, Bonneville is selling power to the Klickitat R. E. A. at the present time, isn't it?

A. I don't know.

Q. You don't know. Now, Mr. Stevens, in figuring the amount [685] of surplus power, or amount of power that you might have available for sale from the Priest Rapids plant, upon what did you base your determination of the amount of power that would be for sale, the figures for 1942 alone, or the figures for 1942 with prior years?

A. Didn't use either of them; I used the capacity of the system when the canal was repaired to put in sufficient water to realize the investment they already have in there.

Q. Oh, I see; your estimate, then, and your capitalization was based upon the assumption that additional monies would be spent in changing the canal to supply all of the water that could be used profitably by the plant?

(Testimony of J. C. Stevens.)

A. That is correct in arriving at the capitalization, but again I repeat that I did not use that capitalization in arriving at my value.

Q. On your capitalization scheme you assumed first that you could develop, would be in a position to add to the purchase price enough more money to develop the full capacity, the generating capacity, of the plant; you assumed second that the plant would pay no taxes; you assumed third that you would be able to market all of that power; in fact, you assumed everything that was favorable to a return on the investment, is that correct?

A. Well, that's a pretty broad statement. No, I won't accept that. I assumed just what I stated that I assumed, nothing [686] else.

Q. And then you capitalized it on the basis of 3 per cent? A. That is right.

Q. Now, Mr. Stevens, in fixing your value on this property which you stated in your opinion the property was worth, did you fix that value on that property as property that was in a position to manufacture and deliver its full capacity of hydro-electric power, or did you consider the fact that the prospective purchaser would necessarily purchase that plant with the trust imposed upon it to deliver free of charge to the Priest Rapids Irrigation District and the area therein lying free power for the purpose of pumping water to——

Mr. Powell: Pardon me——

Q. Let me finish the question— all of the lands irrigated in that District in 1943, together with the additional acreage——

(Testimony of J. C. Stevens.)

Mr. Powell: Making a speech, not asking a question.

Q. —that might be added thereto within the reasonably near future?

Mr. Powell: I object to a question of that kind. He's addressing the jury, not asking a question.

Mr. Ramsey: I don't know how I could ask it any other way. [687]

Mr. Powell: I do.

The Court: Just a moment; the question has been asked. Do you have an objection?

Mr. Powell: I do, your Honor.

The Court: What is it?

Mr. Powell: We object to the question calling for an answer or conclusion of the witness on a matter not testified to on direct examination; further, in that it is a question that calls for an answer which is not within the province of the jury, because it is a province which your Honor will be required to pass on as a question of law, not as a question of fact. We're valuing the property not with any burdens upon it, because the government has taken the properties and must pay just compensation for them, and isn't taking them with any burdens, and the properties have been valued with no burdens on them, and it is my understanding that is the purpose of the condemnation action, to fix the value of the property taken.

The Court: I will sustain the objection. Do you wish to be heard on that?

Mr. Ramsey: I wish to be heard rather extensively, if the Court please.

(Testimony of J. C. Stevens.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.) [688]

The Court: I might state first the court's view. It might shorten the argument. I doubt it, but it might. It seems to me that this property should be valued at its fair cash market value. What I propose to do here is to have a valuation placed upon all of the property of the District, that is, the fair cash market value, including the irrigation properties and the non-irrigation properties, that is to say, the power plant and the power transmission line. Under that theory of the case, which the court has adopted, there should be a finding of the full cash market value of the power plant. However, as to what compensation the District is entitled to, so far as the power plant is concerned, would depend upon in what proportion it is used for the sale of power and what proportion it is used in connection with the irrigation system, to furnish power for pumping water, so that I think the idea Mr. Ramsey has in mind might be material as tending to show what burden would be imposed upon the plant in the reasonably near future, in all probability, after the taking, and to arrive at how much surplus power there would be, which would go to determine the question of what proportion of the plant should be allocated to irrigation and what to non-irrigation, under the Schwellenbach formula, but it doesn't seem to me it should be brought in

(Testimony of J. C. Stevens.)

directly in determining the cash market value [689] of the power plant.

Mr. Ramsey: I submit to the Court first that counsel have been permitted in the putting in of their proof, and in the whole conduct of the case, to go into their own theory of the case, that is, fix the value of all of the facilities of the District, because their theory is they're entitled to be paid for all facilities of the District. I believe that the same rule should apply as to the government. The government has come in with a theory which is diametrically opposed, and I can't see why counsel for the defendants should be permitted to put into evidence everything that has to do with the establishment of their theory, and the government be barred from proceeding on its theory.

In the second place, I am not asking for a conclusion of this witness. It is a direct question that calls for a no or yes answer, that's all.

In the third place, it is the government's theory that the government should be called on to pay for here only what it takes. It took this power plant with a duty imposed upon it, the duty defined in the case of Black Rock Irrigation District, the perpetual duty to supply water to those lands down there. Now, the government took only what a private purchaser could or would have taken if they had purchased it, and that was defined [690] in just that way in the Black Rock case, that here was property susceptible of developing electric power, susceptible of developing perhaps a large amount

(Testimony of J. C. Stevens.)

of electrical power which could be sold, nevertheless, first and foremost, imposed upon that property was the trust obligation to the land. Now, the purchaser going in there to take it, the private purchaser, could buy only what the seller had to sell, which would be the plant with the trust imposed upon it, and that very materially would affect the fair cash market value of that property, so materially affect it that twice, when the operating company went bankrupt and that property was for sale in the bankruptcy proceedings, not a bidder could be found to take it at any price.

The Court: I think that would be true, Mr. Ramsey, if you condemned the power plant alone, and then you had an obligation, if that were physically or legally possible, if you could separate this out and condemn the power plant, and it would have the duty of serving this land, but your own theory is you took the land and the water rights and you have no obligation, because you have no irrigated lands.

Mr. Ramsey: Just a moment. If the government bought one piece of land it doesn't relieve the District nor the power plant from supplying water.

The Court: But you took all of it.

Mr. Ramsey: All right, but if we had never taken the facilities of the District the obligation would still be there to deliver the water on that land. We don't relieve it because the title passes to the government. The relief comes when the government takes over the facilities, and then it can operate

(Testimony of J. C. Stevens.)

those facilities for its own benefit or not, but I don't conceive that by the mere taking of title of land in the District, that the District is relieved of the duty or obligation of continuing to furnish water for irrigation on those lands.

The Court: I understand the government's theory, Mr. Ramsey. It's been argued, I think, on at least half a dozen occasions, one all day long in Spokane. I've heard your theory and I haven't adopted it in this case. I haven't adopted the defendant's theory. I will be obliged to instruct the jury that the defendant is not entitled to any compensation whatsoever for their irrigation works, or for any of this property that was devoted to irrigation at the time of the taking. I am permitting them to show the value of the works only because that is to be submitted to the jury in the form of an interrogatory for other purposes than the purpose of their verdict. I will try to make that very clear to the jury. [692]

I am not adopting the theory of the government, nor the theory of the defendant. I can't very well carry three theories; it's hard enough to carry one, which is the theory Judge Schwellenbach had, and which I have adopted.

Mr. Powell: For the purpose of the record, may it be understood, if your Honor please, that even though we have introduced evidence dividing the values, that we do not thereby accept or concede the correctness of the court's ruling in adopting the Schwellenbach formula.

(Testimony of J. C. Stevens.)

The Court: Oh, yes, I understand that.

Mr. Powell: We have tried to simplify it in that way rather than complicate it.

The Court: Oh, that is understood, of course, that neither side accepts the theory the court has adopted here. The objection will be sustained, and the government will be allowed an exception.

(Short recess)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceeding were had within the presence of the jury and one alternate juror.)

Cross-Examination

(Continued)

By Mr. Ramsey:

Q. Now, Mr. Stevens, what did you say you figured your sale [693] of power, at what rate did you figure your sale of power in computing your possible profits from the sale of the power at the plant there? A. I used 3 mills.

Q. 3 mills per—— A. Kilowatt hour.

Q. Kilowatt hour. Did you know that the Priest Rapids Irrigation District had a ten year contract with the P. P. & L. Company for the sale of their excess power at the time the government took it over?

Mr. Powell: I object as immaterial, because the government is condemning the property and taking the fee simple title free of all benefits.

(Testimony of J. C. Stevens.)

Mr. Ramsey: This is merely preliminary.

The Court: I'll overrule the objection, and see where it leads.

Cross-Examination

(Continued)

Q. Did you know that? A. Yes.

Q. Did you know that they were actually selling that power at $13\frac{1}{4}$ mills per kilowatt hour?

Mr. Powell: I renew my objection.

The Court: Overruled.

A. It is dump power, taken when, as, and if it is available. I'm figuring on firm power. [694]

Q. You're assuming, in other words, that you could deliver a certain amount of power under contract and at all times?

A. Yes, with the proposed improvement that is contemplated in the power company.

Q. After you rebuild your facilities?

A. No, we don't rebuild the facilities; we spend a small sum of money in realizing the investment.

Mr. Ramsey: Now, I submit to the Court that this is no proper method of approach in determining the value of property, to assume that in the future, and after the acquisition of the property, more money will be spent in developing additional power for surplus, and additional conditions.

The Court: What is it you wish the court to do, then, Mr. Ramsey?

Mr. Ramsey: I am asking the Court to instruct the jury to disregard all of the testimony of this

(Testimony of J. C. Stevens.)

witness that has to do with the delivery of firm power or the delivery of more power than was being generated there at the plant at the time of the taking, predicated upon proposed future additions and improvements on the plant.

The Court: Well, I think it will go to the weight of his testimony, rather than to its admissibility, in the cross examination. I'll deny the motion to strike.

Mr. Ramsey: Exception. [695]

Cross-Examination

(Continued)

Q. So your estimated income from the sale of power was predicated upon the basis of the sale of that power at 3 mills per kilowatt hour?

A. Yes.

Q. Rather than the $1\frac{3}{4}$ mills per kilowatt hour that the Priest Rapids Irrigation District had been receiving and would have received under their ten year contract.

A. Yes, instead of any other price besides the 3 mills for firm power.

Q. Now, Mr. Stevens, I want to go back for just a moment to the pumping plant. I believe you stated that you found down at the pumping plant two motors, two pumps, operating in series, that is, hooked together for the purpose of pumping?

A. Two pumps, yes.

Q. Is that an efficient way to pump?

(Testimony of J. C. Stevens.)

A. Well, it was the most efficient thing that could be done after they found out that the pumps separately wouldn't raise the water.

Q. Yes, but was it an efficient way to pump?

A. Oh, yes, that's an efficient way to pump; it is done many times; lots of times they pump by pumps in tandem.

Q. Wouldn't the cost of that pumping have been lowered about 50 per cent if a pump that was capable of pumping to the [696] possible 65 foot head had been installed there?

A. Well, the kilowatt hours consumed by those two motors was of course more than would have been consumed in a modern pump designed for that head.

Q. In other words, if you were operating that pump plant, or if you were looking it over for a prospective client, would you have advised him to continue his operation with these two pumps in tandem, or would you have advised him to replace that with a modern pump designed for the lift?

A. As long as the power was available there at that cost I certainly would advise him to continue operation of those two pumps in series.

Q. You mean as long as power was available at no cost? A. Yes.

Q. You would advise him to operate the two in series?

A. Well, at whatever cost it was there at that time.

(Testimony of J. C. Stevens.)

Q. Well, wouldn't the cost of operation be very materially increased in that manner over the cost of operating a pump designed to lift that water, if necessary, the full 65 feet?

A. You see, they had those two pumps in—the efficiency of that combination was around, a little over 50 per cent, as Mr. Hall testified to, 51 per cent, I believe he said; that included the efficiency of the motor and the pump and the pipe lines and everything, and the new unit that [697] was in had, by reason of its variable speed, a much higher efficiency so that the plant efficiency altogether, the three pumps in operation, probably, my estimate was they had an efficiency of around 60 per cent efficiency, which isn't so bad for a pumping system.

Q. Well, I'm getting at the cost there. Of course they can hook any number of pumps in tandem there in order to get the water up there, but would it be advisable in view of the probable cost, if you were paying for the electricity?

A. It might; it is purely a matter of dollar economy; shall we continue to operate at this cost, or will we save enough by replacing those with new pumps to warrant the replacement.

Q. To a very large degree, wouldn't you say those pumps should be depreciated for obsolescence?

A. Well, I did depreciate them to a 40 per cent condition.

Q. To what? A. 40 per cent.

Q. Well, actually those pumps had been in operation there for some 39 years?

A. Yes, a long time.

(Testimony of J. C. Stevens.)

Q. And there would be a very severe depreciation on a pump in operation that long, anyway, whether they were obsolete or not?

A. Not necessarily, as the ordinary maintenance would take [698] care of the wear and tear which could be done.

Q. That is not what we're dealing with. We are dealing with the value of the pump for sale purposes. If those pumps that had been in operation there for 39 years was to be offered for sale, wouldn't there be a very sharp depreciation in their value due to depreciation through use?

A. Well, I depreciated them 60 per cent, which I think is a fairly sharp depreciation.

Q. It is a sharp depreciation, but I'm trying to separate obsolescence, now, from depreciation.

A. Well, I don't think there is any depreciation, as such, except obsolescence, over and above what could be repaired by maintenance.

Q. Do you think that those pumps after being used for 39 years there was worth dollar for dollar as much as a new pump would be?

A. Oh, no; I didn't say that.

Q. I know you didn't; you changed it to obsolescence and depreciation both.

A. Well, I don't draw very much distinction between depreciation and obsolescence. It is all there together, over and above what can be taken care of by maintenance.

Q. Well, there could be 100 per cent obsolescence without any depreciation at all, couldn't there?

A. Yes, it could.

(Testimony of J. C. Stevens.)

Q. And there could be 100 per cent depreciation without any obsolescence?

A. Not for those pumps, it couldn't, nor for the motors. You might have a wreck, and wreck them, of course.

Q. Yes, I was just going to ask you, what would you say was the degrees of depreciation on the generator replaced in 1937 up at the plant?

A. That was a breakdown. The whole thing failed, the unit run away, and the generator was all broken up inside of the case; wrecked.

Q. Yes. Now, then, by depreciation, for sale purposes, do we mean the difference in the price that the unit would bring in its used condition as applied to the price that a brand new unit would bring?

A. Well, depreciation of a unit is a matter of physical fact. I don't think it has any special significance, or anything to do with the price, particularly, that one might pay. It might or might not, if I understand your question correctly.

Q. Well, let's go into a distinctly new field. Let's take a building. Let's take a house here in town 40 years of age. It still offers adequate housing, doesn't it?

A. It may.

Q. If properly kept up? [700]

A. My house is about 40 years old.

Q. And it still adequately houses you?

A. Yes.

Q. Nevertheless, it has a very severe sales depreciation over a brand new house, identical with it in design, doesn't it?

(Testimony of J. C. Stevens.)

A. Not today. I could sell that house for three times what it cost.

Q. Yes, but if it were brand new what could you sell it for?

A. Well, I don't know, but houses are clear out of sight now.

Q. Yes, that is right; however, that's getting away from the question that we're attempting to determine. In that case we recognize the fact that the use and the age of the house does depreciate the sales value, don't we?

A. Oh, it generally does, yes.

Q. Yes, and that is equally true with a piece of machinery?

A. Not necessarily, if you keep it up with maintenance and service.

Q. Let's take a machine kept up in perfect condition, and take a brand new machine, and put them on the floor; would you expect to get the same price?

A. Of course not, but it is not a going concern.

Q. I'm trying to get out of the plant; out of use value; [701] I'm trying to settle down to the item of sales value.

Mr. Powell: I object to counsel's question in which he tries to take the machinery out of the plant and set up second hand values. He's talking of salvage values. He took the whole plant, and now he wants to pick it to pieces.

The Court: Let's go ahead with the cross-examination.

(Testimony of J. C. Stevens.)

Cross-Examination

(Continued)

Q. There's a difference in the sales value, isn't there?

A. There's a difference in sales value if you take it out and put it on an auction platform, than leave it in the plant where it is in use.

Q. Oh, yes, we're back to use value, but when we go into a plant and start putting a price on the building itself, or each item of machinery in the plant, our depreciation that we show in the value of the plant and machinery itself isn't entirely dependent upon obsolescence, is it?

A. Obsolescence is just one of the elements of depreciation. Depreciation is the over-all term, and obsolescence is one of the elements that go to make up depreciation.

Q. All right, the over-all term covering what?

A. I'll read you a definition of depreciation, a very short one, and a good one: "Broadly speaking, depreciation is the loss not restored by current maintenance, which is [702] due to all factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay and obsolescence."

Q. The thing I am trying to get at here, Mr. Stevens, is the wear and tear and decay. We have that factor, don't we?

A. "Not restored by current maintenance."

(Testimony of J. C. Stevens.)

Q. Yes, and there is wear and team on machinery that can't be restored by current maintenance, isn't there?

A. Sometimes there is, yes.

Q. All times there is, isn't there?

A. No, not all times. I think ordinary maintenance would keep those pumps, in the absence of a wreck of some kind, keep them going 100 years, if you wanted to use them for that purpose.

Q. All right, if you only used them for 39 years, their life expectancy is the difference between 39 and 100, which is 61 years, isn't it?

A. I did not allow my depreciation on the basis of expected life.

Q. Well, a prospective purchaser would be somewhat concerned with the prospective life of what he's purchasing, wouldn't he?

A. Not of each individual unit. If he's buying the plant, he would do just what I have set up here, condition of [703] the plant as a whole, 40 per cent.

Q. Would a prospective purchaser be willing to pay as much for the plant, after it is kept up, 40 years old, as he would be willing to pay for a brand new plant with all the machinery, generating facilities, and everything else in a brand new condition?

A. I haven't said so; I've shown a depreciation on all that equipment, 60 per cent on the generating plant and equipment, and 40 per cent on the pumping station.

Mr. Powell: The other way around.

A. 60 per cent on the generating equipment, 40 per cent on the pumping plant.

(Testimony of J. C. Stevens.)

Mr. Powell: Depreciation or condition?

A. Condition per cent.

Mr. Ramsey: I think that's all.

Redirect Examination

By Mr. Powell:

Q. Would you mind looking at your exhibit, Mr. Stevens, on those two pumps Mr. Ramsey's been asking about, you have them in at 30 per cent condition, don't you? That is on page 2, the third item in subdivision 7.

A. Yes, I see I've placed only a 30 per cent condition there, so there is a 70 per cent depreciation on those pumps. I depreciated them more than I did the rest of the equipment at the pumping station.

Q. As far as you per cent condition or your percentage of [704] depreciation is concerned, would there be any difference or would it be affected by the time or date of taking?

A. Do you mean as between May and October?

Q. No, as between 1943, April or October, 1943, and some other year. What was the supply or demand for pumps and motors generally, or electrical equipment?

A. In 1943?

Q. Yes. A. Very heavy.

Q. Could it be supplied?

A. It could not be supplied.

Q. How did people get articles of that kind?

A. Well, they salvaged equipment, repaired it, put it in shape; a lot of second hand equipment was sold. The second hand dealers handling equipment

(Testimony of J. C. Stevens.)

of that kind were able to clean up on much of their equipment that had been held in storage for a long time without buyers.

Q. Was it possible to get a lot of new equipment?
A. No, it wasn't.

Q. Why?

A. Well, the manufacturers were loaded up with war work and other things to such an extent they couldn't supply them.

Q. And was it necessary to have a priority?

A. It was absolutely necessary to get a priority, and you couldn't always get it, either. [705]

Q. If new pumps had been installed in the pump house the pumping station would have been more efficient, wouldn't it?

A. Much more efficient, yes.

Q. And the efficiency would have increased the commercial power for sale, too, wouldn't it?

A. It would.

Q. And is that what you referred to as "dollar economy?"
A. Yes.

Q. Where they would spend the money for new pumps, and save power to sell?

A. That's right.

Q. Now, the example that Mr. Ramsey used, of the house having a certain depreciation, aren't residences generally in the last few years an index of what happens when supply and demand regulates prices?

A. Well, as far as rental property, no.

Q. Pardon?

(Testimony of J. C. Stevens.)

A. As far as rental property, no, because rents have been frozen.

Q. What about the sales?

A. The sale of new houses, of course they were free for sale, not controlled by the government in their control of housing facilities. Prices on those were much higher during that time than they had been prior. [706]

Q. And would the same thing apply to this property, as a general thing?

A. I think so, yes.

Q. That is, how was the date of taking affected in both projects involved here by the general over-all financial condition of the Northwest at that time?

A. Well, that is one reason for these prices that I've set up here. They were higher than have been testified to otherwise, because those prices were in effect in 1943, whatever the cause may have been.

Q. In other words, was 1943 a high or low year?

A. Well, it was on the way to the summit. The peak hadn't been reached yet, but it was above the pre-war prices.

Q. Now, you talked about having used the unit price of 3 mills in capitalizing value, I mean in determining the amount to capitalize. Did you tell us the dump power rate for Bonneville?

A. Well, I said that Bonneville has been selling dump power at 21½ mills in a good many places, I think.

(Testimony of J. C. Stevens.)

Q. And do you know what that rate calls for? That is, under what circumstances does the purchaser get the power at $21\frac{1}{2}$ mills?

A. You mean dump power? It is power that is available when, as and if it is available. It is not guaranteed to be delivered. It can be shut off at any time. When it is [707] available they take it at that price.

Q. And why do you say this is better than dump power?

A. Well, it is firm power; it is available at all times, could be made so available at all times. I don't mean every hour of the year, because there is a certain amount of time that has to be given for this maintenance that I speak of, repairs, and so on. In my calculation I used 90 per cent of the time during which that power could otherwise be delivered.

Q. In other words, even the best power organizations have interruptions of service occasionally?

A. Yes, but of course they overcome that by interconnecting large quantities, large units, or many units, with exchange agreements, by which they may either take or deliver power to the system. Then any plant can shut down for repairs, and they receive their power from the general system without interrupting their service.

Q. And it is metered from one company to another, is that right? A. Yes.

Q. Similar to the way this power is metered?

A. Metered either way—similar to what?

Q. Similar to the way the power is metered in this case.

(Testimony of J. C. Stevens.)

A. Yes, I think so. The power is metered both ways, for power delivered to the Yakima transmission line of the [708] Pacific Power and Light Company, or power may be taken from that line, as I understand the contract.

Q. You have referred to the sale price of a mill and three-quarters for the power at the Priest Rapids plant; were there other benefits too?

A. Well, the other benefits were that they could receive power when they needed it, in emergency, on that same contract and at the same price, if I recall correctly.

Q. And that was a benefit, was it?

A. Oh, yes, certainly it was.

Q. What was the condition of the power market in 1943?

A. Well, it was growing very rapidly, a big demand for power all over the Northwest.

Q. Is it possible, or do you know, Mr. Stevens, if some power is sold and transmitted on a rental basis, over other company lines?

A. Oh, yes, it is done frequently.

Q. Is that done? A. Yes.

Q. On what sort of a basis?

A. Well, I wouldn't be able to say, I don't recall, but it is on a kilowatt hour basis, or perhaps on a yearly rental basis. It all depends on the contract. Many different types and kinds of contracts are written, and I don't know just how that might be written up, but it [709] is done; it is a simple thing to do.

(Testimony of J. C. Stevens.)

Q. Now, you have mentioned in your cross examination that the item of the discharge pipe that you have put in at \$16,000.00, you have depreciated to approximately \$4900.00. Now, could you explain the operations necessary, Mr. Stevens, to arrive at a completed new discharge pipe that would have been installed there, that you have fixed a value on of \$16,000.00.

A. Well, that was a wood stave pipe, six feet in diameter. It consisted of the very best quality of number 1 clear vertical grain staves, cut from, probably milled from 3 by 6 timbers. They had the equivalent of tongue and groove. They had to be held together by steel bands, and the bands that went around them were very likely in two parts, requiring double shoes; the plant includes the excavation, back fill, the erection of the pipe; it had to be erected on the job. The source of this lumber is quite a ways away from this plant, and freight rates would be high, and I think in my statement on cross examination I under-estimated the length of that line. It is nearer 275 feet than 200, so that would be an average price of about \$58.00 instead of \$80.00, as I said before, per lineal foot.

Q. Now, in your item concerning these concrete transitions, I believe counsel raised the question that you had used [710] the same unit price that you did for installing, or for the concrete for the pump house and power plant, which was re-enforced concrete, and in which you included the cost of the re-enforcing material and the windows and doors and things like that.

(Testimony of J. C. Stevens.)

A. Well, this price, this transition, would include the trimming of the slope down to a nicety to place the concrete on, and I assume that forms were used in the canal, the concrete was quite a ways from the source of its supply, equipment had to be brought in to place it, and it is a relatively small quantity, so that the price for a small quantity, from the rather isolated distances for cement and gravel, would be what otherwise would be required for a very large quantity, so I feel that the price of \$50.00 per cubic yard, placed in relatively thin slabs along the canal, that included all these other elements, is a fair price, not exorbitant at all.

Q. Do you have a copy of the Exhibit 15, Mr. Stevens? A. Yes.

Q. Counsel has referred to your reproduction cost in the first column, in his cross examination; he did not make reference particularly to your depreciation column. I will ask you again, then, if the depreciation column, which is entitled "R". Cost Less Depreciation"—

A. That is reproduction cost less depreciation.

Q. —reproduction cost less depreciation, have you actually computed the percentage to arrive at the column 3?

A. Yes, the quantities in the last column, and the reproduction cost less depreciation, are obtained by multiplying those in the column headed "Reproduction Cost" by the condition per cent shown in the column between the two.

(Testimony of J. C. Stevens.)

Q. And you've actually depreciated the items, ranging from 30 per cent on the two pumps up to 99 per cent on the spillway—no, on the——

A. Well, there's some items there is no depreciation; the excavations, for example, and the power canal, 100 per cent, no depreciation.

Q. 90 per cent on some of the equipment?

A. 90 per cent on the new units.

Q. That is 90 per cent condition, not depreciation?

A. 90 per cent condition on the new.

The Court: I don't believe this is proper redirect examination. The exhibit speaks for itself, doesn't it? Is there any difficulty in understanding what that column is?

Mr. Powell: No, your Honor. I'm sorry. Counsel examined him in detail on it, and I don't intend to pursue it.

Q. Now, could you explain again the matter of the confusion [712] that apparently existed in Mr. Ramsey's mind about this Allis Chalmers governor, and the Woodward governor?

A. I think we were talking about different governors. I was under the impression he was referring to the Woodward governor on number 2 unit. That unit was in in 1943. In fact, I am informed it was put in about 1941, I think there's testimony here, and there is also a Woodward governor on number 1, that is the old Allis Chalmers unit, that replaced the Allis Chalmers governor; that was in there since 1941, too, and was there in 1943, and it is the Allis

(Testimony of J. C. Stevens.)

Chalmers governor that I have included in my tabulation, not the Woodward governor.

Q. The Allis Chalmers governor on unit 1?

A. That's right.

Q. You did not see the Allis Chalmers governor on unit 1 when you were there in 1946?

A. No, it was not there. I had to take the tabulation from Mr. Hall's or Mr. Tinling's that that was an Allis Chalmers governor, and then I inquired of the operator there, too.

Mr. Powell: That's all, your Honor.

Recross-Examination

By Mr. Ramsey:

Q. Well, now, I'm not sure I am straight on this governor yet. The item which appears under your generating equipment, number 4, Allis Chalmers turbine driven vertical [713] coupled water wheel and governor, is that the item?

A. Yes, coupled to an Allis Chalmers Francis type triple wheeled turbine, including an Allis Chalmers governor with tanks, pumps, and so forth.

Q. On which you put \$5800.00 as replacement cost?

A. No, on which I placed \$75,000.00 for that unit number 1, which includes the governor, the old Allis Chalmers governor that was there, and the next unit, number 2, includes the Woodward governor; both of those were there in 1943.

Q. Now, getting back to the benefits, aside from the $1\frac{3}{4}$ mills per kilowatt hour that the Priest Rap-

(Testimony of J. C. Stevens.)

ids Irrigation District had under this contract with the P. P. & L. Company, isn't it a fact that under that contract the District was required to pay 4 mills for all electricity that was metered back to them from the P. P. & L. line?

A. I don't know.

Q. Have you read the contract?

A. I think I read part of it, and I don't recall what their back payment price was.

Q. Well, if that is a provision of the contract, would you consider that was any particular benefit to the District?

A. Yes.

Mr. Powell: To that I object as not the best evidence, your Honor. [714]

Mr. Ramsey: I'm just testing his knowledge.

The Court: He can answer if he knows.

A. I stated I thought the price probably was about the same price at which they could sell, but I am stating now that if they could buy back for substitution during breakdowns at 4 mills, that was a very fair price for them.

Mr. Ramsey: I think that's all.

The Court: Any further questions?

Mr. Powell: That's all, your Honor.

(Whereupon, there being no further questions, the witness was excused.)

R. S. REIERSON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. Your name is R. S. Reiersen?

A. That's right.

Q. Where do you live, Mr. Reiersen?

A. In Yakima.

Q. How long have you lived in Yakima?

A. Since October 1, 1943.

Q. Where did you live before you moved to Yakima?

A. In White Bluffs.

Q. What did you do there?

A. I operated a general store.

Q. Did you have a farm also? [715]

A. And I had a farm, and I was a member of the Board of Directors of the Irrigation District.

Q. Since then have you been acting as secretary?

A. Been acting as secretary since 1944, I believe.

Q. Have you made a tabulation from the District records so that you can determine the acreage of privately owned lands within the District?

A. I have.

Q. Will you give us the acreage of lands, Mr. Reiersen?

A. Of the privately owned land?

Q. Yes.

The Court: As of what date?

Q. I think this date, if your Honor please, will be about December, 1942, or January, 1943, which is the last assessment roll; is that correct, Mr. Reiersen?

(Testimony of R. S. Reiersen)

A. It will be taken from the assessment roll prepared for 1943.

Q. Prepared for 1943? A. Yes.

Q. And when was that?

A. In December, I think, or November or December, of '42.

Mr. Ramsey: No objection, your Honor. I think that is as close as we can possibly get.

The Court: Oh, yes, I just wanted to fix it. The year hadn't been stated, or anything. [716]

A. The privately owned lands totalled 3552.13 acres.

Mr. Ramsey: I didn't get that, Mr. Reiersen.

A. 3552.13 acres. The State of Washington had 2194.83 acres.

Q. And 83/100? A. Yes, sir.

Mr. Ramsey: Again, may I have that?

A. 2194.83. The District had 10,165.27, and the United States government had one tract consisting of 38.16.

Q. That was before they filed this action?

A. Before the action was filed, this was on the assessment roll. There were 164.39 acres outside of the District boundaries.

Q. Could you give us the total, first, of the acreage?

A. The total of the acreage in the District boundaries, 15,950.39.

Q. What was there outside of the District?

A. 164.39 acres.

Q. And who owned that?

(Testimony of R. S. Reiersen)

A. That belonged to the Irrigation District, apparently, because we were paid for it, outside the boundaries, and not on the tax roll.

Q. Was it included in this particular action?

A. Presumably, yes.

Q. I have reference, Mr. Reiersen, to the action we're trying [717] now. Is this property around the power house?

A. At the power house? I have not included the property at the power house.

Q. I see. This is property outside of the property at the power house?

A. This is the land that we received compensation for.

Mr. Powell: Now, if your Honor please, this witness will be asked to testify concerning the amount paid by the government for all the property within the Priest Rapids Irrigation District boundaries. This question has a bearing on the legal question in the case, and the government's position, so I presume that offer might be made in the absence of the jury.

The Court: Yes, I think we may as well excuse the jury until Monday morning at 10 o'clock. We'll adjourn at 4 anyway, and there is not much time left. This is rather a long adjournment period, so please remember what I said about not discussing the case with anyone or allowing them to discuss it in your presence. We'll resume the trial Monday morning at 10 o'clock. You may be excused.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: The Court may be a little presumptuous [718] in sending the jury out. Mr. Ramsey hasn't objected. He might not object.

Mr. Ramsey: I think the Court may assume that Mr. Ramsey will object.

Mr. Powell: If your Honor please, the government's position in this case, number 128-99, is based in part on the government's contention that the value of the District's property was fully reflected in the amounts paid by the government for the lands within the Priest Rapids Irrigation District. The so-called Schwellenbach formula, to the extent it operates against the District's interests, is based on an assumption that the value of the irrigation properties of the District was fully reflected in the amount paid by the government for the land within the District. Defendant District offers evidence of the amount the government paid for the lands within the district. That total amount is less than \$650,000.00. The District submits that the bare fact of the amount, less than \$650,000.00, refutes the contention or assumption that the value of the District's properties was fully reflected in the awards to the private land-owners in these cases. This point, we realize, may depend on the value of the District's properties, but we believe it is clear, or at least will be by the end of this trial, that the District [719] property alone had a value far in excess of that amount.

Mr. Ramsey: May I inquire of counsel in his compilation as to the sums paid by the government for the properties within the District, whether included in those sums are the sums paid for those tracts within the boundaries of the District and paying bond and interest charges, irrigated from their own wells?

Mr. Powell: My understanding is that this witness and Mr. Salvini have within the last week made a compilation and spent most of their time on it, and that the figure they have does include all the property in the District, whether irrigated from wells or the system.

Mr. Ramsey: Does it also include the property in the towns of White Bluffs and Hanford?

Mr. Powell: They were not within the District, and paid no assessments.

Mr. Ramsey: I am quite sure that the certificates of title show that a great many of the lots in the townsites do have charges made against them for water.

Mr. Powell: I think you refer to the old town of White Bluffs, which was, and which had a very bad title, incidentally, but there were two or three townsites there, I don't believe—am I wrong, Mr. Reiersen?

Mr. Reiersen: The White Bluffs city I believe was excluded. [720]

Mr. Ramsey: May I point out that in the townsite of Hanford, as well as in Richland, that there were numerous agricultural tracts, being utilized as agricultural tracts, under irrigation, some in

orchard, some in mint, some in other production, and they were having water delivered by the District.

Mr. Cheadle: If this may, your Honor, become a three-cornered discussion by counsel?

The Court: Yes.

Mr. Cheadle: If the lands in Richland or the lands in White Bluffs or Hanford were outside of the District boundaries, and were not subjected to assessments by the District for the furnishing of water to lands within the District, they might still be furnished with water for domestic or irrigation purposes by the District, but they would not be lands within the District.

Mr. Ramsey: Granted, counsel.

Mr. Cheadle: The point I want to make, your Honor, is this; the mere fact that, let us say, residential properties in the town of Sunnyside, if that has been excluded from the District, may be furnished domestic water by the District does not make those lands members in the District, and the same situation may obtain here. The question is, are the lands in those [721] towns legally within the legal boundaries of the District? I confess I do not know the answer.

Mr. Ramsey: That is the very question I raise, and I grant all that counsel has said. I am raising the question as to whether those lands are not within the District.

Mr. Powell: My understanding is that the compilation includes all the real property within the District when the government took the property on February 23, 1943.

Mr. Ramsey: I presume the witness is in the best position to answer the questions.

Mr. Powell: I am depending on his answers.

Mr. Reiersen: We have taken this from the assessment rolls, and it includes all the land, with the exception of lots in the old town of White Bluffs, which were in dispute, or in question, as to whether they were within the borders of the District or not, and the title report showed that they should be cancelled wherever they were.

Mr. Powell: That was because, was it not, Mr. Reiersen, that there was a question as to the exclusion order, and subsequent to the entry of an order excluding the old town of White Bluffs, the District did assess erroneously? [722]

Mr. Reiersen: Pardon?

Mr. Powell: The District did assess the property after the exclusion order was entered?

Mr. Reiersen: Yes, but my understanding was that it was ruled that they should not be included, and I think we signed disclaimers to them.

Mr. Ramsey: With reference to the townsite of Hanford, was the entire townsite of Hanford excluded from the District?

Mr. Reiersen: As far as the townsite is concerned, there is no distinction whatever there on the assessment roll. There were one or two places in the edge of town that are on there. They get their water, and were listed on the tax roll.

Mr. Ramsey: Well, aside from what may be shown by such compilation, I submit to the Court that this is not a question that can have any bearing

whatever upon the legal questions involved here. There is no obligation upon the government to pay for irrigation district facilities any spread that may be represented between the cost, not the value, but the cost of those facilities, and the amount paid for the land, any more than there would be any obligation upon the landowners to accept from the government only a sum that would be equivalent to the cost of their facilities. The two things do not bear the slightest relationship toward each other. As I have argued to this Court before, we might have an irrigation district which cost five million dollars to irrigate 10,000 acres. It would be so ridiculously high per acre, and impose such a charge per acre upon that land, that land would be practically valueless, because no one would want to buy it and stand the charge against it, and to say that the value of that land, or the value of the facilities, either one, that the value of the land should represent the full cost of the project, would be just as silly as to say that the project was worth what it cost, on the other hand.

The Court: As I understand it, however, here, it is obvious that cost and value are two different things; a castle built in the desert might cost a hundred thousand dollars and be valueless, but as I understand it, what they propose to do here is put in evidence the total amount you have paid for the lands in the District, and show that that is a great deal less than the actual value, the market value, of the facilities of the District.

Mr. Ramsey: So what do they propose to prove by that?

The Court: Well, it is their proof.

Mr. Ramsey: I just don't understand the purpose of the offer. May I say again—— [724]

The Court: I think the purpose of the offer, as Mr. Powell stated, as I understand it, is to show that there hasn't been adequate compensation to the land owners for the value of the irrigation works of the system in paying them for their irrigated lands. Is that the purpose of it? Have I stated it correctly?

Mr. Cheadle: Yes, your Honor, and if I may make this further point, counsel now states at this bar that there is no relation at all between what was paid for the lands within the District, and the valuation of the District properties involved in this case, and yet, your Honor, it has been stated in brief of the government and it has been stated in arguments before this Court by this same counsel that very substantial sums were paid by the government, both in purchase contracts and condemnation awards, for these farms down here, and that that compensation fully reflected the value of the District properties, and your Honor, if this is not admitted in evidence there is nothing to keep the government on appeal from making the same contentions in written brief and in oral argument, and I submit that as a mere matter of fairness, we're not putting this to the jury, we're not asking that it go to the jury, but I submit that as a mere matter of fairness we should be permitted to have in the record what the government actually paid, and I also submit, your Honor,

that the government's own position here is that it succeeded, if it has a successful theory, that through its purchase of some lands and its condemnation of others, and even in the condemnation, they say they succeeded to the interest of the land owners, and they say they acquired everything the owners had, and they rely on the Horse Heaven case, which we say is inapplicable, and yet, your Honor, if it is shown by this proposed evidence, and shown by what the jury here determines to be the value of the District's assets, that in fact the government paid to the land owners less than the amount of the value of the District properties, I think it is obvious those values were not reflected, and may I suggest that it should be borne in mind that with regard to the condemnations of those individual properties, where the government says the District property values were fully reflected, no evidence was permitted to go to the jury as to the value of the District properties, and we submit that evidence as to that has direct bearing on the legal contention of the government, and for that purpose it is admissible in the record of this case.

The Court: I don't see how I could admit this in evidence in this case and not submit it to the jury. We've got only one record, and that is the evidence admitted in this case in which we have a jury to determine [726] the facts, so I would have to admit it and send it to the jury, or exclude it, I think. However, of course, if you make your offer specific enough as to the amount that the government has paid as a whole, it would be in here so

that if an appellate court held I had ruled erroneously on it, it would be in the record.

Mr. Powell: May we then now examine this witness, on that basis, in the absence of the jury, which would be our offer of proof, and then detail the evidence again at the jury's return if the court admits it?

The Court: I think the only purpose of examining the witness would be to lay your foundation for your offer, and then you can state in the offer what you propose to do.

Mr. Powell: The only thing is, I don't have all the figures. The witness has them, and he has compiled them. I'll be glad to do it.

Mr. Ramsey: And I would submit to the Court that this not the proper way to prove this; it is not the best evidence for some layman to fan through a thousand tracts of land involved in this proceeding and come in and say "I find from looking through those the government paid so much money." That is not the best evidence as to what was actually paid by the government on those tracts. [727]

The Court: Well, of course, you're not in a position to say whether you question the total amount or not.

Mr. Ramsey: I am questioning the method of proof of the total amount.

The Court: It is a matter of record here. They could bring in the files of the clerk and introduce them. That would be rather cumbersome.

Mr. Powell: I might suggest, if your Honor please, that most of these payments were made

through Mr. Ramsey's office. Nobody is in a better position than Mr. Ramsey to bring them in to the Court.

Mr. Ramsey: That is quite correct, and if I could recess this case for about a week, I might be in a position to get it.

Mr. Powell: Well, it's taken us about a week.

The Court: I don't want to keep you from making your offer, of course. It is the view of the Court that it isn't properly admissible in this case, and I will sustain the objection, but first we must have the offer of proof here. I have no objection to your making it by examining the witness.

Mr. Powell: Well, I assume it would be more convenient to your Honor and counsel if we would prepare it in writing and submit copies. [728]

The Court: Yes, perhaps; it is near the end of the day here.

Mr. Ramsey: Well, why can't you include as a part of your offer the statement that you offer to prove by the records in the case that the total sum paid by the government——

Mr. Powell: No, if your Honor please, it isn't all in the case. We've gone to the county auditor's office and taken into consideration the amount in the deeds.

The Court: I see; it is a matter of record, but this isn't all, the case here, is it?

Mr. Ramsey: Yes, your Honor, because in those cases where direct purchase was resorted to, motions and orders of dismissal were entered in 128.

Mr. Powell: Counsel has forgotten, if your Honor please, in those purchases and deeds, there were no declarations of taking filed on those properties.

Mr. Ramsey: That is correct, but you will still find in the clerk's office in every instance where property was acquired by the government in direct purchase, that a motion and order of dismissal was entered, and a copy of the deed attached to the original motion for dismissal of the tract out of the case.

The Court: Do the deeds show the true consideration?

Mr. Ramsey: Yes.

Mr. Cheadle: Without requesting that the Court reconsider its ruling, I would like to mention this one point. If the irrigation district cannot present this evidence in this case, I do not know where or in what way they can present it to a court and combat the contention of the government, which is based in part, your Honor, not entirely, they have their legal contention that they are fully entitled regardless, but they have also contended, and they included it in their objection to the offers of proof in those early October, 1943, proceedings, that the value of the District properties would be fully reflected in the compensation paid to the individual land owners, and your Honor, I don't know how else we can get it before the Court, and it is a fact on which the government, without revealing the fact, bases its argument in part, and a large part.

Mr. Ramsey: Let me clarify the situation. The contention of the government has been and it has

been reiterated and unquestionably will be again, that the value of those district facilities as irrigation facilities necessarily are reflected in the value of the land. Now, that doesn't mean the value that counsel might want to ascribe to its facilities separated from their duty [730] to the land, because after all, irrigation facilities and properties have no value except as they are applied to the irrigation of the land, and as I pointed out to the Court before, you might get the same identical benefits from the investment of fifty thousand or five million dollars. The true value of irrigation facilities is reflected only in the benefits that accrue to the land served thereby, and the government's contention and position is predicated upon the fact that the irrigation facilities are as valuable as the benefits that they confer on the lands which they serve, and if those lands are purchased and paid for as irrigated lands, with all of those benefits accruing, then the full value of the irrigation facilities for the purpose for which they were designed have been compensated.

Now, I think that makes the government's position clear on that particular thing. The statement was not intended to apply to the original cost of the facilities, or to the reproduction cost less depreciation approach, or to the value that might be ascribed to them if they were lifted out of that location and put elsewhere, or devoted to another purpose, but it does apply to the actual value of the facilities to the lands which they serve, as irrigation facilities.

The Court: It seems to me you haven't any uniform [731] standard of value that you can supply

anyway, aside from what Mr. Ramsey has said. Value is a question of opinion, in the final analysis, and what one jury may determine as value does not mean that is the actual value. If you submit to two different juries the question of value of the same land you get different answers. I think if there is a discrepancy, though, it might have some probative value. I don't think it is proper in this case, however, I do want you to make as full an offer as you feel you should, and it would be best, I think, to give you more time to prepare and present it when the trial is resumed next week.

Mr. Powell: May I ask if Mr. Stevens and Mr. Tinling may be excused from further attendance in the case? If you would rather not say, counsel, we will ask them to come back.

Mr. Ramsey: I certainly don't want to put you under the obligation of compensating expert witnesses for extra days, because if they come as high as the government's witnesses it may run into considerable money. I wouldn't object to that.

The Court: Very well, they may be excused, then. Is there anything else tonight?

(Whereupon, the court took a recess in this cause until Monday, February 17, 1947, at 10 o'clock a.m.) [732]

Yakima, Washington, February 17, 1947

10 o'clock a.m.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: Now that we have had the weekend to rest, at least from this case, I hope we will move along a little more expeditiously, shall we say. I hope it doesn't run into the next case. Do you have your offer of proof ready now, Mr. Powell?

Mr. Powell: Yes, we have, your Honor. Shall we read it into the record?

The Court: I suppose you may as well. Mr. Ramsey, you have a copy?

Mr. Powell: Or we can give a copy to the reporter.

The Court: If you wish you can give a copy to the reporter, and Mr. Ramsey can make his objection. Is that acceptable to you, Mr. Ramsey?

Mr. Ramsey: Yes, your Honor.

Offer of Proof of the Priest Rapids Irrigation District

The defendant Priest Rapids Irrigation District offers [734] to prove by the witness R. S. Reiersen that he and B. Salvini, the chairman of the Board of Directors of said District, have made a thorough and careful examination and comparison of the assessment rolls of the district with the records of the office of the County Auditor of Benton County, Washington, and with the files in Civil No. 128 in the office of the Clerk of this Court. That the purpose of said investigation and comparison was to determine the total amount that the United States

of America, Petitioner, has paid for all of the lands within the Priest Rapids Irrigation District. That the Government in this condemnation proceeding has contended that there is no obligation on the part of the United States of America to pay compensation for the district's properties for the reason that the value thereof was reflected in the amount paid for the privately owned lands. That paradoxically in the condemnation trials regarding said privately owned lands the Government successfully objected to offer of proof of the value of the district's properties for the same reason in part. That said investigation was just completed on February 14, 1947, in order to include settlement amounts of as many tracts as possible, and that where no settlement has been completed the amount included has been the amount deposited in Court by the United States as estimated [735] just compensation. That the amounts paid for the land to private land owners included all of the improvements on the property, as well as any crops growing thereon. That said investigation discloses that for the lands within the district payments or deposits have been made as follows:

Privately owned lands receiving water from the district and privately owned lands not irrigated	\$449,899.30
Privately owned lands within the district irrigated by private pumping from owner's wells	124,265.00
State owned lands	7,435.00
District owned lands.....	49,361.50
<hr/>	
Total all lands	\$630,960.80

That in compiling the above figures where lands and tracts were both within and without the district, the entire amount has been included, thus showing a greater amount paid than was actually paid for lands within the district. That in a large number of settlements and of awards the greater part of the value was for crops as the time of taking was contemporaneous with the time of harvest.

That the proof here offered is relevant and material to the issue of whether the district [736] should be awarded just compensation in this trial for all of the district's properties; and that, if the compilation be inadmissible under the best evidence rule, then defendant district offers the same proof from the many files of the Court in Civil No. 128 which, Government Counsel has stated in open court, record the price paid for each tract of land in the district.

* * *

Mr. Ramsey: If the Court please, the offer of proof on behalf of the defendant District is objected to, first, upon the grounds that the testimony by which the defendant District offers to establish the sum paid by the government in this proceeding and by direct purchase for the lands within the District is not the best evidence of the facts; that the records in this proceeding, that is, civil number 128, United States vs. Alberts, is the best evidence of the ultimate facts sought to be established, in that in the records of the case as to each of the individual tracts under condemnation, and in the records in that case of dismissal of tracts under motion of the government, and supported by a certified copy of

the deed to all tracts acquired by direct purchase, may be determined, and it is submitted that those matters cannot be put in evidence by the testimony of lay witnesses who claim to have [737] gone through the records of the case and the records of the Auditor of Benton County.

The further objection is made that the value of the facilities of the District cannot be in any way established by the proof of the sum paid by the government in this proceeding for the privately owned lands and the lands owned by the District, the county, and the state within the boundaries of the District; that the value of the facilities for the use for which they were intended can only be determined by the additional value that is given to the lands within the boundaries of the district through their utilization for the purpose for which they were intended, and that cost price, or the difference between the alleged cost price of those facilities and the sum paid for those lands in no way reflects nor can it in any way reflect the value of the facilities themselves.

Mr. Cheadle: I merely want to make one brief statement, your Honor, in addition to argument we presented Friday, regarding the best evidence rule. Our written offer of proof this morning contains the offer that if, in the event——

The Court: I was just about to cover that by my ruling.

Mr. Cheadle: I beg your pardon. Our [738] offer was to prove by the records of the Court if the first offer is inadmissible under the best evidence rule.

The second and only point I wish to address myself to in regard to the objection made by Mr. Ramsey this morning is that according to his statement what we offer to prove has no bearing on the value of the District's properties. The offer is not made for that purpose, but it is intended as not relating to what is before the jury, but as being relevant and material to the legal issue before your Honor as to whether the District is entitled to compensation for all of its properties. I think aside from those points we will merely rely on the argument presented Friday.

The Court: Yes. The offer will be denied, the objection to it sustained, the defendants allowed an exception. The ruling is on the substance of the offer, and not on its form as not being the best evidence. The court without requiring the defendant to bring the documents actually here to show by the best evidence this offered proof, will assume that would be done, and will not require it; and I will say that since the ruling of the Court is on substance rather than form, it will be unavailing for them to bring the documents here. Is that sufficient to show that the offer is denied on the matter of substance, and not on the matter of the best [739] evidence?

Mr. Powell: May I ask that the reporter will copy the offer in as being in open court?

The Court: Yes, I think it is understood that the offer will be copied into the record, the same as if it was read in the record.

Mr. Cheadle: On the first day of proceedings before the jury, when I believe the witness Salvini was on the stand, at the time when Mr. Powell asked

the first question which bore directly on value, government counsel made objection, the objection, as I recall, was overruled, and that was the first time in the proceedings before the jury at which there was occasion for objection to be made and the court's ruling, all involving the decisions which your Honor announced informally in chambers. At that time we requested that we be permitted at that point to file an exception which we would prepare in writing to the so-called Schwellenbach formula ruling. We have prepared that. It was typed only yesterday, but a copy has been handed to government counsel this morning, and with your Honor's permission, which I believe was given at the time, we will hand a copy to the reporter. Is that agreeable, Mr. Ramsey?

The Court: Yes, the exception may be made in that way, by handing a copy to the reporter, unless there is objection. [740]

Mr. Ramsey: No objection.

Mr. Cheadle: Our understanding is that it would be typed into the transcript at that point, at which point we stood on that day and requested the permission.

The Court: Well, if the reporter hasn't that point definitely marked——

Mr. Cheadle: I requested him at the close of that day's session, your Honor, to mark the point, and I believe your Honor did so also.

The Court: Well, if you have any difficulty working out the mechanics of getting it in the right place we can bring that up later. You may bring in the jury.

Mr. Powell: Does your Honor want to make a ruling on our offer of proof in the presence of the jury?

The Court: I don't think it would be necessary; no, I don't think so.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

R. S. REIERSON

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

(Continued.)

By Mr. Powell:

Q. Mr. Reiersen, you had been asked concerning the division of ownerships of the real property in the District, had you not? On Friday, when we concluded, you had just [741] given your testimony as to the ownerships of the property in the irrigation district? A. That's right.

Mr. Powell: You may cross examine.

Cross-Examination

By Mr. Ramsey:

Q. Mr. Reiersen, you stated that at the time the government took over the District in this proceeding that the District itself owned approximately 10,165.27 acres of land?

A. Yes, more or less.

(Testimony of R. S. Reiersen.)

Q. Well, now, as a matter of fact, Mr. Reiersen, isn't it a fact that at that time all of the district acreage was under option to the Priest Rapids Development Company?

Mr. Powell: Objected to as immaterial, if your Honor please.

The Court: Overrule the objection.

Mr. Powell: Not the best evidence.

Mr. Ramsey: This is cross-examination.

The Court: Well, he can answer if he knows.

A. The Priest Rapids Development Company had an option to sell land for the district.

Q. And under that option the District provided what sums should be paid to the District for each of these tracts of land, leaving it to the Priest Rapids Development Company to sell for whatever they could? [742]

Mr. Powell: If your Honor please, I don't think that is proper cross-examination. That is just the matter that we offered proof on.

Mr. Ramsey: Well, I submit to the Court that the witness has testified the District owned this land at the time the government took it over. The nature of this option is material for the purpose of establishing that.

The Court: I will overrule the objection.

(Whereupon, the reporter read the last previous question.)

(Testimony of R. S. Reiersen.)

Cross-Examination

(Continued.)

Q. Isn't that true, Mr. Reiersen?

A. That is correct, with the also addition that in case sales were made in excess of \$15.00 per acre, the sum above that amount was to be divided between the District and the real estate agency.

Q. Yes, and as a matter of fact, in the acquisition of these lands the government paid the Priest Rapids Development Company for the lands, and the Priest Rapids Development Company compensated the District, under the terms of that option, isn't that true?

A. As a selling agent for the District, yes.

Mr. Powell: Objected to as not the best evidence.

The Court: Overruled.

Q. The District received the balance due from the Priest [743] Rapids Development Company under the option?

A. That's right.

Q. Now, you say that this was optioned to the Priest Rapids Development Company as the sales agent for the District, but as a matter of fact, the option provided that on the payment of certain sums to the District by the Priest Rapids Development Company the District would convey the lands to the Priest Rapids Development Company, isn't that true?

A. As a selling agent, yes; they were agents for the owner.

(Testimony of R. S. Reiersen.)

Q. I understand that, Mr. Reiersen. I am getting now to the nature and form and contents of your option. In other words, your option did not provide that if the Priest Rapids Development Company brought in a purchaser to the District at or above a certain sum, the District would sell the property to the purchaser brought in, and pay a commission, did it?

A. I don't believe I understand your question.

Mr. Powell: I would like to renew my objection, your Honor, not proper cross-examination, and not the best evidence.

The Court: I'll overrule the objection, if he knows about it.

(Whereupon, the reporter read the last previous question.) [744]

A. I don't believe the terms of the contract, as I stated previously, that we had—the real estate company had an option to sell that land for us, and we could not sell it direct.

Q. Well, did not your option provide this; that for a certain fixed sum to be paid by the Priest Rapids Development Company to the District, the District would sell and convey to the Priest Rapids Development Company the lands described; wasn't that the form of your option. A. Yes.

Q. In other words, it wasn't the ordinary broker's contract that you had with them, it was an out and out option to the Priest Rapids Development Company?

(Testimony of R. S. Reiersen.)

A. My understanding was that they acted as agents for selling our land.

Q. Yes, I understand that, but I'm talking now about the form of your contract with them. you did not have the usual broker's contract with them at all, did you?

A. No, I don't believe it was a regular broker's contract, no.

Q. Your option ran directly from the District to the Priest Rapids Development Company?

Mr. Powell: Is it understood this all goes in over our objection, your Honor?

The Court: Yes, that will be understood.

Q. Did it not? [745]

A. The deed would be made to the Priest Rapids Development Company, or to the purchaser, in either event, when they paid up.

Q. And the Priest Rapids Development Company, by paying the sums stipulated under the option, could have called upon the District for a deed to all of that land, couldn't they?

A. Provided the District Board of Directors had approved of the sale. It had to be approved by the Board.

Q. Well, the Board of Directors did approve the contract, didn't they? A. Yes.

Q. And the contract provided that, didn't it, that upon the payment of stipulated sums a deed would pass from the District to the Priest Rapids Development Company?

(Testimony of R. S. Reiersen.)

A. In this case the government was buying the land, and the Priest Rapids Development Company exercised their option in order to convey title to the government, and that is the price on which our payment was based.

Q. Your option with the Priest Rapids Development Company was drawn a long time before the government ever came into this picture, wasn't it?

A. I believe two years prior—in '39.

Q. And the Priest Rapids Development Company, under the terms of that option, had been selling land out there during [746] that whole two years, hadn't they, to settlers?

A. 1939 and '40, until '42, the last year very few sales were made, because neither Mr. Miller nor Mr. Adams, the partners who acted——

Q. Well, isn't it a fact that when the government went in there, that there was a block of about 600 acres that the Priest Rapids Development Company had marketed to a group of Mormon settlers, and that only the intervention of the government taking over this property prevented it passing to these Mormon settlers?

Mr. Powell: We object further on the ground that this point, matter of this kind, carries over beyond the date of taking, and would not be material, because counsel's question is predicated upon the fact there would be something for the future, something to be done after the taking, and would therefore change the taking from what it was at the time the taking took place.

(Testimony of R. S. Reiersen.)

Mr. Ramsey: I'm asking about the condition at the time the government went in.

The Court: I will overrule the objection.

A. The Priest Rapids Development Company from the time they first came in there sold possibly in the neighborhood of five or six hundred acres to settlers that they had brought in there, and during the last year, in '42, there were very few sales made, but prior to that these [747] sales had been made.

Q. Well, I'm asking now about the status of the situation with reference to the sale of a considerable acreage, some five or six hundred acres, that was impending when the government took over the project.

A. In addition to——

Q. What had already been sold.

A. Not that I know of. I'm not familiar with—I had a record of all the contracts that they had made up to the time that the government took possession of the area.

Mr. Ramsey: Now, if the Court please, unless Mr. Reiersen will be available at the time that the government puts on its case, I ask leave at this time to make this my own witness.

Mr. Powell: He'll be available.

Mr. Ramsey: If he will be available, I don't want to call him now.

The Court: I think it is best to put it in in order if the witness is available.

Mr. Ramsey: Yes, on Counsel's assurance that the witness will be available.

(Testimony of R. S. Reiersen.)

The Court: I might say that the best evidence rule would be invoked on direct; if it depends upon option or contract you had better have it, if it is available. Do you have something further? [748]

Mr. Powell: Yes, I do, your Honor.

Redirect Examination

By Mr. Powell:

Q. This contract between the Priest Rapids Development Company and the Priest Rapids Irrigation District was for what purpose, Mr. Reiersen?

A. To sell agricultural land for the irrigation district.

Q. Was it for colonization?

A. Colonization, yes.

Q. You wanted more people in the District?

A. To bring in more people into the District.

Q. Was it made for the purpose of selling the land to the government?

Mr. Ramsey: Well, I suggest that counsel is very much leading the witness, there.

The Court: Well, it is leading. Go ahead.

A. No.

Q. Well, what did you want from this contract?

A. It was a colonization program, to bring in more people in the valley, and at the same time they were setting up a program for further development of the irrigation facilities of the District.

Q. Now, do you remember when this action was started, Mr. Reiersen? A. In 1939.

Q. No, this action, this condemnation [749] action you're testifying in today.

(Testimony of R. S. Reiersen.)

A. Oh, the first notice of the government possession was received on March 6, 1943. That is the first notice of the individual owners of the area. On April 17, 1943, I received a receipt from the Army Engineers that they had taken possession of the pumping plant at Coyote. On July 30 the Army Engineers took possession of the transmission line between Coyote and Priest Rapids, with the exception of one small area of that line, section of that line, and on October 1, 1943, we received notice that the government was taking possession of the power plant.

Q. Did the District want to sell the properties the government is taking in this case?

Mr. Ramsey: Oh, objected to, if the Court please.

Mr. Powell: Well, I think counsel will concede they didn't want to. I want to be sure he doesn't argue that they tried to get them to take it.

Mr. Ramsey: I don't think counsel has ever heard government counsel argue that way.

(Whereupon, the reporter read the last previous question.)

The Court: That is immaterial. I'll sustain the objection.

Redirect Examination

(Continued.)

Q. Mr. Reiersen, you're now secretary of the Priest Rapids Irrigation District? [750]

A. I am.

(Testimony of R. S. Reiersen.)

Q. And you have all the records of the Priest Rapids Irrigation District?

A. All the records that we had in the files.

Q. Some of the records cannot now be found?

A. For a considerable length of time our office was at White Bluffs, Washington, and the Army Engineers took possession, went in and moved stuff around there without our consent.

Mr. Ramsey: If the Court please, this is objected to as incompetent, unless it is merely preliminary.

Mr. Powell: Well, it is preliminary.

The Court: It should be applied to something that pertains to this law suit. We don't care about it unless it pertains to this law suit.

Redirect Examination

(Continued.)

Q. Do you have a copy of the Marc Miller option in your files?

A. The original option or contract on these lands?

Q. No, the original contract between the Priest Rapids Development Company and the Priest Rapids Irrigation District.

A. We have the original contract, drawn in 1939.

Q. Was there an option on other lands? Isn't that the [751] contract you've been talking about, Mr. Reiersen?

A. Yes.

Q. Where is it?

A. In the file.

Mr. Ramsey: I was just going to ask if this witness had that contract available and with him.

(Testimony of R. S. Reiersen.)

A. 1939 is in the file; the renewal in 1943 should be in the file.

Q. Well, is it?

A. I haven't been able to locate it.

Q. When did you last see it?

A. Sometime in May or June, I think, of 1943.

Q. And where was that?

A. In the Irrigation District office.

Q. And who had keys to the office?

A. The secretary, Joe Grell, and Marc Miller.

Q. Who is the Priest Rapids Development Company?

A. The owners, or the officers, of that company, was Marc Miller and J. G. Adams; they were the two partners.

Q. Is that C. Marc Miller, the initial "C"?

A. C. Marc Miller.

Q. His name is Marc? A. Yes.

Q. How do you spell his name?

A. C. M-a-r-c M-i-l-l-e-r. [752]

Q. Now, do you know by whom he was employed when this project started in 1943?

Mr. Ramsey: That is objected to as incompetent, irrelevant and immaterial.

The Court: I don't see the materiality of this; Mr. Powell, how Marc Miller spells his name, and all that. What's that got to do with the law suit?

Mr. Powell: I think except it would tend to identify Mr. Miller as being an employee of the War Department.

The Court: What difference does that make?

(Testimony of R. S. Reiersen.)

Mr. Powell: It makes this difference; counsel will argue these lands were sold and entitled to water.

The Court: Yes.

Mr. Powell: And therefore when the government took them over they were entitled to water; also under that option contract we propose to offer some exhibits in evidence to show that Mr. Miller had a different understanding of the contract than counsel is leading the Court and jury to believe, and that water was not available for these lands.

Mr. Ramsey: I will submit to the Court that counsel is not attempting to lead the Court or jury to believe anything. I assure counsel that the government will secure that contract if it is available, and put Mr. [753] Miller on the stand.

The Court: I think the time for that would be on rebuttal, if it is necessary.

Mr. Powell: I thought this line of cross examination was not proper cross examination; it is part of counsel's case in chief, and not part of ours.

Mr. Ramsey: I submit to the Court the witness testified the District owned these lands at the time of taking.

The Court: And the fact that it was optioned to someone else would at least have a bearing on the question of ownership. That is the only reason it was allowed at this time. I don't know what the government is going to attempt to prove, at this time.

(Testimony of R. S. Reiersen.)

Redirect Examination

(Continued.)

Q. As a matter of practice, Mr. Reiersen, did the district have any jurisdiction over the sales of lands with water?

Mr. Ramsey: Objected to as attempting—is that on the contract, Mr. Powell?

Mr. Powell: Yes.

Mr. Ramsey: That is objected to as attempting to vary the terms of the written contract.

The Court: Well, I'll overrule the objection. I permitted you to go into it orally.

A. I would like to have that question stated.

(Whereupon, the reporter read the last previous question.)

Mr. Ramsey: Further objected to as not being predicated upon a legal right, but merely what may have been done.

The Court: Well, I'll overrule the objection.

Mr. Ramsey: Exception.

The Court: See what it leads to.

A. The Board of Directors passed upon the land that was sold.

Q. And in what way?

A. Well, they approved the sale, if they thought it was desirable for farming land. If a man wanted to invest in it, and he knew that water couldn't be put on it, and he wanted to buy it under the circumstances, well, that was his privilege.

Mr. Powell: That's all.

(Testimony of R. S. Reiersen.)

The Court: Any further questions?

Mr. Ramsey: Oh, I don't think so, that's all.

Mr. Powell: I will ask leave to recall him for a few questions, if I may.

(Whereupon, there being no further questions, the witness was excused.)

B. SALVINI

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Direct Examination

By Mr. Powell: [755]

Q. Mr. Salvini, do you know whether or not there were any R. E. A. lines in Benton County in 1943, that is, Rural Electrification Association, or whatever it is?

Mr. Ramsey: Objected to as incompetent, irrelevant, and immaterial.

The Court: Well, I presume it is preliminary. I'll overrule the objection and see where it's leading.

A. There was.

Q. And where?

A. The headquarters was at Prosser.

Q. Pardon?

A. The headquarters was at Prosser, but the Rural Electric they had a line coming down towards Richland, and it was crossing down at the Horn, but oh, I judge it is probably 20 miles straight south of our line.

(Testimony of B. Salvini.)

Q. 20 miles straight south of your line. Where was your line, where was the Coyote Junction station located from the railroad station or siding of Allard?

Mr. Ramsey: If the Court please, before we go any further into this matter I believe at least the Court and counsel are entitled to know where we're headed.

Mr. Powell: Counsel made a point all through this case that the only market was the Pacific Power and Light Company. I want to show that there was another market in 1943. I think that is material, counsel. [756]

The Court: Well, all right, go ahead.

A. The Allard railroad station was just about a mile east of our junction at Coyote.

Q. It was on the Milwaukee tracks?

A. It was just about a mile west of the Milwaukee tracks, at Coyote Junction.

Q. Well, the Allard station was on the tracks, wasn't it?

A. The Allard station was on the track, but I thought you asked me about our——

Q. Coyote Junction? A. Coyote Junction.

Q. That was a mile west of the Allard station, is that right? A. Yes.

Q. Now, Mr. Salvini, the Horn that you refer to is the point in the Yakima River that is the farthest north in Benton County?

A. Well, we call the Horn the point where the Yakima River between Benton City and Richland

(Testimony of B. Salvini.)

makes that big curve, just before it gets to the Kennewick and Richland dam.

Q. I see. Now, there has been some discussion, Mr. Salvini, about the governor on the number 1 generator. Do you know when that governor was overhauled?

A. The governor to the number 1 generator was overhauled in 1941. The winter of 1940 and '41, I think it is, when we put in the new generator, and we rebuilt that number 1 [757] governor and put in a new Woodward governor on the other generator.

Q. What kind of a governor was the old one?

A. The old one, I think they called it Allis Chalmers. I don't know if it is or not, but I think that's what——

Q. I see; now, what work, if any, had the District done in taking care of the pole line, that is, the transmission line.

A. Well, the transmission line, we been doing work right along, all the time. We did the first around 1934, 1935, we got a carload of treated stumps, I mean stubs, and we started at that time, and every time that there was something needed, well, we go along and replace them, and along '37, '38, and '39, during the W.P.A., whenever the W.P.A. didn't was busy in the summer in agricultural work, we kept them busy all winter to re-stub those poles or replace them, whenever they was out of repair, so the line we kept in number one all the time. We put in probably 90 or 95 poles, new ones, since 1937.

(Testimony of B. Salvini.)

Q. Yes. Do you know how many stubs?

A. No, I don't know the number, because there was a lot of stubs. Whenever we run out of those treated, why, we used to get a pole and saw him up and make a stub, so I don't just the number.

Q. What condition was the line in, or the poles in, in the [758] spring of 1943?

A. They was in good condition.

Q. And about the construction of this line along the hillside, Mr. Salvini, was there anything peculiar about the construction of this pole line along the hillside?

A. Well, the hillside was practically all in solid rock. It was up on the top of the hills where some mile or so up there was kind of hard to get at, to those poles, but being that they're down in solid rock, well, usually they didn't give much trouble.

Q. Well, how were those poles put in, if you know?

A. Well, I don't know; those poles was put in up there by the previous company.

Q. Well, are they right on the rock cliff?

A. Some of it, they are.

Q. Do you know how much water was pumped at Coyote Pumping Station?

A. I know we had the ditch clear full, and they claimed we just had a reading up there, that whenever the gate's under four foot it was time to not put any more in the ditch, but we kept it full all the time, from 96 to up around 100, and that reading, I don't know if it means feet or inches or what it was.

(Testimony of B. Salvini.)

Q. Where was that reading?

A. Well, it was up at the head of the pipe line that emptied [759] out into the canal.

Q. I see. How much water did you deliver per acre per year?

A. Well, we used to deliver 96 acre inches.

Q. Was that more than was needed?

A. Well, yes, it is, but we had the water, and it won't cost us any more to have the ditch full than to not, so as long as we have it, well, we didn't have any more new facilities for taking in the new ones, so we just give plenty of water.

Q. You gave everybody all the water they wanted?

A. Well, I suppose they were, because some of the fellows they didn't change it for two or three days, so they must have got all they want.

Mr. Powell: That's all.

Cross-Examination

By Mr. Ramsey:

Q. How old was this power line, Mr. Salvini?

A. Huh?

Q. How old is this power line?

A. This power line, I don't know when it was built. I was told it was around 1910 or 1912 or '13; I don't know just what year.

Q. Well, was that put in by the old Hanford Power and Irrigation Company to run from the power plant down to the pumping station?

A. That's what I was told. [760]

Q. And at that time the line, what you call the

(Testimony of B. Salvini.)

stub line in the station, was a part of the original line, wasn't it?

A. I suppose they were; I don't know.

Q. Well, that so-called stub line is a 66,000 volt line too, isn't it? A. Yes.

Q. And the only thing is, the P. P. & L. tied on to the line at what is now known as Coyote Junction; that's the only change that's been made to the line since it was originally built, isn't it, that the P. P. & L. tied on to it at what is now known as Coyote Junction? A. Yes.

Q. Now, the power plant up there was built about 1907, I believe it says on the building?

A. I think so.

Q. And the transmission line was built to carry the power generated there down to the pumping plant? A. I suppose they were.

Q. Was the pumping plant at Coyote there pumping to capacity during the season?

A. She was pumping full capacity?

Q. I say, was the pumping plant pumping to capacity during the season?

A. Well, not if we had a bigger canal. [761]

Q. Not if you had a bigger canal?

A. If we had a bigger canal we could pump more water.

Q. If the pump was pumping to capacity that's all the water it could pump, wasn't it?

A. Well, I was told by people that used to take care of the repairs up there that they could pump more water if we had a place to put it; the pumps were bigger than the canal would carry.

(Testimony of B. Salvini.)

Q. You mean the canal wouldn't carry the water that was pumped by the pump, is that right?

A. Yeh.

Q. About what part or per cent of the water that was pumped into that canal do you figure was delivered on to the land, Mr. Salvini?

A. Well, I didn't know just the amount that was delivered. We was told, we had several engineers up there to check it through the season, we wanted to know just how much we was losing through evaporation or seepage, but even at that we had lots of water, the laterals that we took over from the company, they was full all the time.

Q. Well, you say even at that; you by-passed my question.

A. I didn't know just the amount that we was losing.

Q. Well, now as a matter of fact, you estimated you were losing at least 50 per cent of the water that was pumped into that ditch, before it got to the land? [762]

A. Well, I don't think it was quite 50 per cent that they told us.

Q. You don't think it was quite 50 per cent?

A. No.

Mr. Ramsey: I think that's all.

The Court: Any further questions?

Mr. Powell: No.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Ramsey: May I ask if this witness also will be available when the government puts on its case?

Mr. Powell: Mr. Salvini?

Mr. Ramsey: Yes.

Mr. Powell: Yes, I'll ask him especially to stay. Mr. Salvini, we just want you to stay here in the courtroom. That's what you wanted?

Mr. Ramsey: Yes, I don't want to make him my witness now.

BARRY DIBBLE

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. State your name, please.

A. Barry Dibble.

Q. B-a-r-r-y D-i-b-b-l-e?

A. That's correct [763]

Q. Where do you live, Mr. Dibble?

A. Redlands, California.

Q. Could you speak a little louder, please, Mr. Dibble? What is your business, sir?

A. I am a consulting engineer.

Q. Do you have any degrees in engineering?

A. Yes, I graduated from the University of Minnesota with a degree of Electrical Engineer.

Q. And when was that? A. In 1903.

Q. Did you ever attend any college or university here in the State of Washington?

(Testimony of Barry Dibble.)

A. Yes, I attended the College at Pullman, which was then called the Washington Agricultural College.

Q. Are you a member of any society of engineers?

A. I am a member of the American Institute of Electrical Engineers, and of the American Society of Civil Engineers, and of the American Association of Engineers; also a member of the American Society of Agricultural Engineers.

Q. When did you first have any connection with a power plant, Mr. Dibble?

A. In 1899, while I was going to school at Pullman, I worked in the power plant at the college, which supplied part of the town of Pullman and the college.

Q. And after you left the University of Minnesota in 1903 [764] what work did you follow?

A. The first work done was supervising the construction of the power plant at the Louisiana Purchase Exposition at St. Louis; then I went to Cincinnati and was employed on the electrical construction of a steam power plant for the Columbus and Cincinnati Traction Company. From there I went to Michigan and was employed on a traction company between Jackson and Battle Creek, then to Shawinigan Falls in the Province of Quebec, in Canada, where I was an operator in the hydro-electric plant there.

Q. How long were you there?

A. About a year. From there I went back to my home in St. Paul and was employed by the St. Paul

(Testimony of Barry Dibble.)

Gaslight Company, which had both the gas and electric system in St. Paul at that time, then I went to Minneapolis and was with the Twin City Rapid Transit Company for three years on hydro-electric steam plant and substation design and construction. Then I entered the United States Reclamation Service, as it was then called, in 1909.

Q. When?

A. In the year 1909, and was assigned to the office of the Chief Electrical Engineer in Los Angeles. That office was engaged in the design of numerous hydro-electric plants and some steam, pumping plants, and transmission lines. From there I was sent to the Minadoka project in [765] Idaho, where for five years I was superintendent of the power and pumping system there. The power plant consisted of a five unit plant, each unit having a capacity of 2000 horsepower, 1400 kilowatts, approximately. In that capacity I handled the sale of power to the municipalities and to farmers' organizations which were organized and took power at central points and from substations and from the power plant and distributed it to their members. They were mutual companies. It was an idea developed there in that project, before the time of the R. E. A. At the end of five years I was made manager of the project, in charge also of the irrigation system of about 121,000 acres, and of storage and delivery of stored water to the Minadoka project, and also to the other projects on the Snake River in Idaho.

(Testimony of Barry Dibble.)

Q. What is the principal town, or are the principal towns, in the Minadoka project?

A. The principal towns are Rupert and Burley.

Q. In your work there with the Minadoka project did you have any obligation to determine or allocate the cost of the power plant to irrigation and commercial power? A. Yes.

Q. Was there an irrigation district there?

A. There were two irrigation districts.

Q. Who owned the power plant? [766]

A. Well, the title, of course, was in the United States, and there were different interests, the irrigation districts had different interests. It was allocated to them in connection with their construction charges.

Q. I see, and that is the basis, or rather, there was a division, or was there a division of the power value of the power plant property between irrigation and commercial power? A. Yes.

Q. Did you have any connection with it?

A. Yes.

Q. What connection?

A. Well, I worked it out.

Q. And you worked out the division that should be made? A. Yes.

Q. In this particular project you refer to, Mr. Dibble, did the irrigation district——

A. May I correct, there? I did not work out the division between the two districts, but my work consisted of allocating the cost of operating the power system between the irrigation and commercial sales.

(Testimony of Barry Dibble.)

Q. And who handled the commercial sales of power from the Minidoka project?

A. That was my, one of my jobs there.

Q. And you were then in the employ of the Reclamation Bureau? [767] A. Yes.

Q. Were there any pumps used in connection with that project?

A. Yes, there were several pumping plants of different capacity.

Q. And in your duties there at the Minidoka project did you have to develop markets for your power?

A. Yes, I went there before any power was sold at all, and there were three yearly contracts that had been made, and preparation was being made for the sale; beyond that I developed the business up until the time I left.

Q. And did you sell any of that power to private companies? A. Yes.

Q. Now, when did you leave the Minidoka project? A. I left in 1923.

Q. By the way, how many acres are there in this project?

A. About 121,000 in the project as it was at that time. It has since been increased somewhat.

Q. Where did you go when you left that project?

A. I was made chief electrical and mechanical engineer of the Bureau of Reclamation, with headquarters in Denver, Colorado.

Q. How long were you there?

A. About a year and a half.

(Testimony of Barry Dibble.)

Q. As such chief electrical and mechanical engineer for the [768] Bureau did you have any connection with power plant properties?

A. Yes, with all the power plant properties of the Bureau of Reclamation, both the design, preliminary work, and the design and construction and supervision of the operation and maintenance.

Q. And what connection, if any, did that work have to do with the division of the cost or value of power plant property between irrigation and power values?

A. Well, I don't recall in that position that the matter came up at all.

Q. It was principally design and construction?

A. Yes.

Q. At that time did you have any connection with Boulder or Grand Coulee?

A. Yes, at that time the Bureau of Reclamation was making its first studies of both those projects, and I participated in the design and preparation of reports on both of them. That also included studies of the market possibilities for the power that was expected to be generated. There were several, I might add that there were several smaller projects that the marketing of power was a feature on also, that came up at that time.

Q. During '23 and '24 when you were in Denver?

A. Yes.

Q. When you left the Bureau where did you go?

A. I went to California to open an office as consulting engineer.

Q. At Redlands, California?

(Testimony of Barry Dibble.)

A. Redlands; I've been there ever since.

Q. Have you had any connection with power plants and power plant properties and irrigation since that time?

A. That has been my work all the time.

Q. Did you ever work for any foreign country, Mr. Dibble?

A. Yes, I was in Mexico for a year, with some very brief intermissions, working for the National Irrigation Commission of Mexico. That was principally in the years 1928 and '29.

Q. Are you a consulting engineer for any agencies now handling and marketing power, or operating power properties?

A. Yes. I am consulting engineer for the United States Indian Service, Office of Indian Affairs, I presume it should be called. There are two projects in Arizona in which power marketing and generation is involved, one the San Carlos project, which is around the town of Coolidge, about half way between Phoenix and Tucson; the other the Colorado River project, near the town of Parker, Arizona. Another project in which the same activity is involved is the Flathead Project, in Montana, where the project has a [770] small hydro-electric plant, and also buys power from the Kerr Dam of the Montana Power Company, under the terms of a license from the Federal Power Commission to the Montana Power Company.

The Court: The court will recess now for ten minutes.

(Short recess.)

(Testimony of Barry Dibble.)

(All parties present as before, and the trial was resumed.)

Direct Examination

(Continued)

By Mr. Powell:

Q. Mr. Dibble, you stated that you had been consulting engineer with the United States Indian Service? A. Yes.

Q. In that same connection, did you have any work on the Wapato Project? A. Yes.

Q. How long have you been consulting engineer and had connection with the Wapato Project?

A. Since about 1927, I think.

Q. Do they have any power plants?

A. Two hydro-electric plants, and one direct pumping plant.

Q. How do the plants on the Wapato Project compare with the Priest Rapids plant?

A. They're quite similar in size.

Q. What about the pumping plant? [771]

A. It is a little larger than the pumping plant on the Priest Rapids project.

Q. That is, the Wapato plant is larger than the Priest Rapids plant?

A. It has a capacity of 120 second feet, compared with about 90 or 100 second feet on the Priest Rapids plant.

Q. How do the power plants compare in size?

A. One of them has a rated capacity of 2400 kilowatts, the other one has a capacity of about 1800, as I remember it, I'm not sure, 1600 or 1800.

(Testimony of Barry Dibble.)

Q. They're approximately the same size as the Priest Rapids plant, or similar in size to the Priest Rapids plant?

A. The Priest Rapids plant falls between them, in capacity, in rated capacity.

Q. Are the Wapato plants operated the year 'round? A. No.

Q. When are they operated?

A. They're operated in the summer time. There are drops in the main canal, and they use the irrigation water to produce power.

Q. The water is taken from where?

A. From the Yakima River.

Q. Just below the gap? A. Yes.

Q. Now, in the three projects you mentioned, the San Carlos, [772] the Flathead, and the Colorado River plants, did you work on or was there any report made by you of the division in values between irrigation and power?

A. Not at Wapato; there was on the San Carlos and the Flathead projects.

Q. Have you been doing any work in connection with the marketing of power, Mr. Dibble, other than that you have mentioned in connection with these projects?

A. Well, my work in Mexico involved the marketing, or at least the study of marketing of power from the dams that were in contemplation there. I've done some work for the Bureau of Reclamation in that connection, and for the Metropolitan Water District of Los Angeles, Southern

(Testimony of Barry Dibble.)

California, and for irrigation districts in Texas and New Mexico, and one project in Idaho known as the Clear Lakes project, and I presume others.

Q. Do you do work for the War Department?

A. Yes.

Q. In what connection?

A. Well, I now have a consulting contract with the Seattle District Office in connection with studies on the Columbia River on an extension of what is called the 308 work. I have a contract with the Kansas City District involving studies on the Osage River, where both flood control and power and navigation are included, and under that contract [773] I am also doing some work for the Garrison District at Bismarck, North Dakota, on the Garrison Dam on the Missouri River.

Q. When you were asked concerning your employment in this case, Mr. Dibble, did you get a clearance from the District Office?

A. I did, from the Seattle Army Engineers' Office.

Q. You advised them the Irrigation District had requested your services in this case? A. Yes.

Q. Have you ever been a witness in actions similar to this?

A. Well, each one is different, but they have been condemnation cases.

Q. You have been a witness in condemnation cases? A. Yes.

Q. Now, about this 308 report, what connection, if any, did you have with that, Mr. Dibble?

(Testimony of Barry Dibble.)

A. The original 308 report, I was consulting engineer in Portland to the Division and District offices and to the Seattle District also. That work was done in 1930, most of it.

Q. What particular work did you do?

A. I made my particular work the power developments and the power markets.

Q. Power development and power markets?

A. Studies, yes.

Q. Have you had any connection with the fixing of any rates or determination of rates for the sale of power?

A. Yes.

Q. Where?

A. Well, I worked out the rates for the Minadoka project in Idaho, I worked out the rates for these Indian projects and for other projects, and did some work in connection with the Bonneville Administration.

Q. When was that?

A. The Bonneville work was in 1939.

Q. And who was operating the Bonneville Administration at that time?

A. At the time I went there Mr. Frank Banks was the administrator, was taking that over, and before I left Dr. Raver had been appointed.

Q. And when you were there were you with the Reclamation Bureau?

A. No.

Q. What agency was operating the Bonneville?

A. The Bonneville Power Administration was operating the system, as it is now. Mr. Banks was assigned there temporarily to fill in the vacancy that had been created by the death of Mr. Ross.

(Testimony of Barry Dibble.)

Q. And you were assigned there temporarily under Mr. Banks? [775]

A. Yes, I was the assistant administrator.

Q. What work did you do there in connection with the determination of power rates?

A. Well, the major part of the work that came within my field was the power contracts and negotiations, the handling of rates matters, and such things, along with the transmission work and so forth.

Q. Were the transmission lines as they now exist built at that time?

A. Not all of them, no. In fact, most of them were not.

Q. What about the line from Coulee to Bonneville?

A. That was under construction, had not been completed; in fact, hadn't passed much beyond the survey stage.

Q. How long were you there with the Bonneville Administration?

A. About four months.

Q. About four months? A. Yes.

Q. During that time were any particular rates established and later approved?

A. Yes, we worked out the revision of the rate schedules to make them more flexible and adaptable, and under the Bonneville Act any rates that are established must be approved by the Federal Power Commission. I went to Washington to talk them

(Testimony of Barry Dibble.)

over with the Federal Power [776] Commission, and they were finally approved.

Q. There has been some discussion about the Bonneville Dump Power rate, Mr. Dibble. Did you have any connection with the establishment of that rate?

A. Yes, I designed the rate.

Q. And what is that rate?

A. It is a rate of $2\frac{1}{2}$ mills a kilowatt hour for surplus, dump power, with the condition that the power is withdrawable at any time, and that the operating purchaser must have a sufficient capacity so that he can carry his load if the power is withdrawn.

Q. Have you had any connection with the sale of any power sites or power properties?

A. Yes. After I left the Bureau of Reclamation I promoted a company, finally sold a power site near Buhl, Idaho.

Q. Now, what was the name of that?

A. That was the Farmers' Mutual Power Company.

Q. Sold to whom?

A. Well, that is the company that was to organize the—it was organized to handle—the site was sold to the Idaho Power Company.

Q. The site was sold to the Idaho Power Company, is that right?

A. I did not conduct the negotiations with the Idaho Power Company when the sale was finally made there; the Farmers' [777] Mutual Company had an option on the site.

(Testimony of Barry Dibble.)

Q. And have you testified in any condemnation cases involving power properties, Mr. Dibble?

A. Yes.

Q. Have you testified in the State of Oklahoma?

A. Yes.

Q. In what case?

A. I am not sure of the title of the case. It involved the Pensacola dam site, on the Grand River. The case was brought by the Grand River Dam Authority against the owners of the site.

Q. And have you testified in any cases in the State of Washington?

A. Yes, I have testified in several cases in connection with Grand Coulee Dam and reservoir, involving the Grand Coulee dam site originally, and later a suit against the Big Bend Transit Company for the condemnation of The Narrows site, on the Spokane River. I also prepared to testify in the case involving the Kettle Falls site and another site farther up the river, I forget the name of it.

Q. The Kettle Falls case was not actually tried, was it?

A. Well, no testimony was taken.

Q. No testimony was taken in the case?

A. No.

Mr. Powell: Now, I pass from that, if your Honor [778] please. If counsel wants to examine the witness as to his qualifications, he can do it now.

The Court: Well, why not examine him in the regular way? That's part of the cross-examination, his qualifications.

No. 11704

United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation,

Appellee.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
IN THREE VOLUMES
VOLUME III
Pages 781 to 1182

Upon Appeal from the District Court of the United States
for the Eastern District of Washington
Southern Division

JAN 23 1948



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Upon Appeal from the District Court of the United States
for the Eastern District of Washington
Southern Division

(Testimony of Barry Dibble.)

Direct Examination

(Continued)

Q. Mr. Dibble, when were you first consulted about this particular case, if you recall?

A. Some time last fall.

Q. And have you seen the Priest Rapids power plant?

A. Yes.

Q. And the Canal?

A. Yes.

Q. Have you seen the pumping station?

A. Yes.

Q. Have you made a detailed examination of the irrigation system?

A. No, not very much in detail.

Q. Have you been in court and heard all the evidence in connection with the inventories that were made of the properties?

A. Yes.

Q. In that connection, Mr. Dibble, have you prepared, or have you examined, the properties to give your opinion as to the per cent condition of them? [779]

A. I have.

Q. In some cases were properties missing that were included on the inventories?

A. Yes.

Q. As to those properties you haven't been able to fix a per cent condition, have you?

A. No, but they were in general relatively minor.

Q. Could you just briefly give a description of the power canal and power plant and transmission line, and tell us what you arrived at as the per cent condition and the reproduction cost new, and the cost new less depreciation?

(Testimony of Barry Dibble.)

A. The power canal takes out of the Columbia River about two miles above the power plant, and consists of a channel which to some extent was a natural channel, but has been improved. It now carries the flow of water which is required for the power plant. The power plant—do you wish to go through the entire property in that way?

Q. Yes, please.

A. The power plant or generating stations contains two generating units with a large number of auxiliary items of equipment, including exciters and transformers, coil circuit breakers, switch board, and similar equipment which is needed for operation. From the power plant to the pumping station there is a transmission line, wood pole construction, of 66,000 volts, about 16 miles. 14.4 [780] miles, or 90 per cent, is used jointly to carry power that is sold and power that is used at the pumping station at Coyote Rapids. The pumping station contains four, or did contain four, pumps——

Q. Before we leave the power plant property, Mr. Dibble, could you give us the quantities and the reproduction cost new, the per cent condition, and depreciated values as you have estimated them?

A. The power canal has been inventoried by Mr. Hall, and I have used his inventory of the excavation as the basis for my estimate. He estimated that there were 222,000 cubic yards of excavation. From a general examination of the canal I have estimated that one-third of that excavation was in rock, and two-thirds in gravel. The estimated cost,

(Testimony of Barry Dibble.)

unit cost, which I put on that work is \$1.00 a yard for the rock, 30 cents for the gravel, making a combined cost of \$118,400.00. In connection with the power canal——

Mr. Ramsey: Just a moment, if you please. I didn't get the amount there.

A. \$118,400.00.

Mr. Ramsey: \$118,400.00. All right.

A. In connection with the diversion of water into the canal there is a crib dam that crosses one of the channels of the Columbia River. There is also a spillway structure. [781] The inventory does not contain any estimate of the quantities that are involved, and I felt it best to omit those in making up my estimate, so that my estimate is definitely short the amount of cost involved in those items. To the estimate of excavation I have added 15 per cent for the item of general expense, including such items as management, engineering, supervision, legal, clerical, travel expense, and items of that nature. This amounts to \$17,800.00, making a total of \$136,200.00 for the power canal. As to condition, I estimate that at 100 per cent. There is no depreciation.

As to the generating station, I have taken the rated capacity of this station, 2100 kilowatts, and have analyzed the cost of stations of more or less similarity to this one in head and in capacity, and have availed myself of other data relating to that sort of thing, and have arrived at a reproduction cost for the generating station of \$514,500.00 as a reasonable estimate for this purpose.

(Testimony of Barry Dibble.)

Q. Does that include the property on which it is located, and the equipment in the plant, and the structure itself?

A. I haven't made any allowance for the property on which it is situated. It does include, however, the power plant building, the equipment, the operators' camp, the overhead charges, all the items that would be a direct charge against the plant itself. I have estimated the over-all [782] condition of the plant at 60 per cent. In this connection I probably should say that it also includes, my estimate also includes the substation, the transformers and coil circuit breakers, and that sort of thing, which are included in the building and in the plant as it now stands.

Q. In that connection, Mr. Dibble, when you made the examination, did you have available the copy of Mr. Tinling's inventory? A. I did.

Q. And did you check the property there against his inventory?

A. Yes, I spot-checked it on major items of equipment, so far as it was possible to do it, and examined the property to assure myself in general that it was correct, that the inventory was correct.

Q. And what did you find as to whether it was?

A. Well, I found a few things that needed correction. They have been now corrected in Mr. Tinling's statement. What I had was a preliminary statement. After my examination Mr. Tinling went there and checked it up himself, and corrected his inventory.

(Testimony of Barry Dibble.)

Q. And the inventory as filed here, exhibit 9, is the corrected inventory, is that right?

A. Yes.

Q. Now, you were testifying concerning the per cent condition. [783]

A. I have estimated the over-all per cent condition at 60 per cent, and the reproduction cost less depreciation at \$308,700.00.

Q. Would you give us that again, please?

A. \$308,700.00. The transmission line——

Q. Pardon me, does that include the transmission line?

A. That does not include the transmission line.

Q. Then your figure of \$308,700.00 is, then, the reproduction cost less depreciation, is that correct?

A. Yes, and that figure does include the substation, but not the transmission line.

Q. Could you give us the transmission line now?

A. The transmission line as far as Coyote Junction I have estimated at \$5600.00 a mile. I have made somewhat detailed estimate of that, and 14.4 miles amounts to \$80,600.00. I have estimated the over-all per cent condition on that line at 40 per cent, making the reproduction cost less depreciation \$32,200.00. The total of those items, then, is \$731,300.00 as a reproduction cost new, and \$477,100.00 as the reproduction cost less depreciation. That makes the weighted average per cent condition 65, approximately.

Q. Now, may we go back to the power plant for just a minute? Have you had any experience with

(Testimony of Barry Dibble.)

Allis Chalmers generators similar to the number 1 unit? [784] A. Yes.

Q. Where? Did they have them at the Minadoka project?

A. The turbines there were Allis Chalmers, not the generators; those were Westinghouse generators. The transformers there, however, were Allis Chalmers, a different type than these at Priest Rapids, but much of the equipment at Priest Rapids, there was a considerable similarity to that at the Minadoka power plant. The Minadoka power plant, by the way, was built about the same time as the Priest Rapids plant.

Q. It was built about the same time as the Priest Rapids plant?

A. Yes, it was begun in 1908 and completed, and the installation of all the units, was completed about 1911.

Q. Is it still producing electricity?

A. Oh, yes. It is in very, very good condition.

Q. How long has it been since you have seen it?

Mr. Ramsey: Now, if the Court please——

Mr. Powell: I'll withdraw it.

The Court: All right.

Direct Examination

(Continued)

Q. You say the Allis Chalmers turbine was used in the Minadoka plant? A. Yes.

Q. In your estimate of the reproduction cost of the turbines [785] would you mind explaining

(Testimony of Barry Dibble.)

what kind of turbines are used now, how the ones in the Priest Rapids plant differ from those used now, and how you arrived at the reproduction cost new?

A. Well, since the Priest Rapids plant was built a new type of turbine has been developed, and that is the propeller type, for low head use, similar to what is now in the number 2 unit. The three Francis type runners on one shaft such as is used to operate the number 1 unit was designed and was very good for the purpose of operating at relatively high speed at low heads in a small unit such as the number 1 unit at Priest Rapids, but styles have changed, and that type of installation would not be used any more, so I did not attempt to estimate on that basis, but estimated on the plant that would function equivalently to the one that is at Priest Rapids. It would be very expensive, unreasonably expensive, to duplicate a unit like that.

Q. With three runners?

A. Now at Priest Rapids.

Q. With three?

A. Yes. The propeller type installation, which would be a modern installation, would be less costly, and I thought it was more reasonable to estimate on that kind of a basis, and these plants that I have compared this plant to are in [786] general that type of plant. There is one which I have used in my comparison that was built on the Boise River in Idaho about 1911, that uses the Francis wheels, and I have that in my study.

(Testimony of Barry Dibble.)

Q. Are the Francis type turbines used in modern plants?

A. Oh, yes, they're used very extensively in plants with somewhat higher heads than this at Priest Rapids.

Q. They are single runner units, are they?

A. Usually single runner—altogether single runner units nowadays. That is the type of unit that is used at Grand Coulee, Boulder Canyon, and plants that exceed 60 or 70 feet in head usually use the Francis type.

Q. Now, Mr. Dibble, did you also examine the Priest Rapids Irrigation District pumping station at Coyote Rapids? A. Yes.

Q. At the time you were there what was the condition of the transmission line between Coyote Junction and the pumping plant?

A. It had been removed.

Q. It had been removed? A. Yes.

Q. Would you mind detailing, please, your general description of the pumping station and equipment, and give the same figures for the pumping station that you have given for the power plant?

A. The pumping station consists of four, or it consisted of four main units. One of them had been removed. There were two units which were originally installed that were Allis Chalmers units. The third large unit had been installed between them, and then there was a small fourth unit which was used for pumping early in the season and sometimes for supplementing the larger units later in the

(Testimony of Barry Dibble.)

season. That smaller unit had been taken out. I did not see that. The motors are directly connected to the pumps, and pump water from the Columbia River into the canal.

The two original pumps are connected in tandem and are used in tandem at times when the pumping lift is so great that one of the pumps will not raise the water from the river to the canal. At other times a single pump is used, and comes through the circuit. When the river is high enough so that the pump can pump the water without the boosting effect of the second one, it does so. There is a substation also in connection with the pumping plant, transformers similar in type but smaller than those at the generating station. That is in a house, not a very permanent building, but it seems to be tight still. The pumping station itself is a concrete building.

I understand that in 1943 there was a wood stave pipe from the pumping plant to the canal. That's now been removed, and concrete pipes have been put there in [788] place of it. I also saw the staves and bands that were piled up there, and had been, I understood that they had been purchased and were owned for use by the Irrigation District in replacing the wood stave pipe, but that since the United States took over the plant that they were not used.

Q. What about the intake pipes in the pumping station?

A. The intake pipes are of steel——

(Testimony of Barry Dibble.)

Q. Could you speak a little louder, please?

A. The intake pipes are steel, and it is necessary to start the pumps to create a vacuum in the pump, pull the water up by suction, flood the pump shell and the runners in the pumps, and for that purpose a priming pump had been used. I have a recollection of having seen the priming pump. Some of the other witnesses testified it was removed. I may be wrong.

Q. Was there evidence of any change of design of the pumping station intake?

A. Yes, the installation of the third pump involved a change in the design. The third pump, which is now called number 2 pump, was placed between the two original pumps.

Q. Did you make any survey of the main canal to determine quantities, Mr. Dibble?

A. No, I did not. I saw the main canal at several points, at the intake and farther down the canal, and followed it [789] for quite a distance through the brush.

Q. And did you have, at the time you made your investigation, a preliminary inventory of the property?

A. I did.

Q. And the equipment in the pumping station?

A. Yes.

Q. And did you then check it with the property there?

A. I did.

Q. What did you find with reference to its accuracy?

(Testimony of Barry Dibble.)

A. Well, as to the power plant I found some items that did not check, and those were called to Mr. Tinling's attention, and he revised his inventory after he looked the plant over again. In general, however, the inventory checked all right.

Q. And the inventory as shown in exhibit 9 is the corrected inventory, Mr. Dibble? A. Yes.

Q. This is the one of which I believe you have a photostatic copy?

A. Yes, I've used it and examined the copy particularly in detail.

Q. Now, can you give us, if you will, please, Mr. Dibble, your estimate of the reproduction cost new, per cent condition, and reproduction cost new less depreciation of the properties that you have described in connection [790] with the irrigation properties?

A. While the transmission line had been removed, it had evidently been there. Some of the poles were lying on the ground, and it shows on the map, and has been testified to. I used as the distance from Coyote Junction to the pumping plant 1.6 miles, which checks with the map, and at \$5600.00 a mile, the reproduction cost of this line amounts to \$9,000.00. The condition has been taken the same as the average condition of the other piece of line as of October 1, 1943, making the reproduction cost less depreciation \$3600.00. The Coyote Pumping Plant, I have estimated that in a manner similar to that used in estimating the power plant. The reproduction cost of that is estimated at \$161,-

(Testimony of Barry Dibble.)

000.00. The condition, including what might be called obsolescence, has been estimated at 35 per cent, making the reproduction cost less depreciation \$56,300.00. The main irrigation canal has been estimated on the basis of the inventories made by Mr. Hall, and included in his exhibit. I don't recall the number of that.

Q. 11.

A. Exhibit number 11, and I have used his inventory in connection with my estimate. He shows excavation common, that is, earth, 266,000 cubic yards, and I have estimated 25 cents a yard for that work, making an item of \$66,500.00. [791] On loose rock and gravel excavation, he sets up an item of 74,000 cubic yards, and I have estimated that a 25 cents also.

Q. At 25 cents?

A. Yes, making that item \$18,500.00. I have not included any allowance for lining, because of the condition of the lining, which is practically all depreciated out. Mr. Hall included an item for flumes, but did not give any inventory, and because of lack of information I decided I would prefer to omit that item. In concrete used in transitions and so forth Mr. Hall estimates 200 cubic yards. I've put the cost at \$30.00 a yard, making that item \$6,000.00. Mr. Hall also includes an item for spillway gates and checks. I have omitted that because I didn't have any opportunity to see those items, and there is no inventory included. Those items that I have included amount to \$91,000.00. To them I have

(Testimony of Barry Dibble.)

added an item for general expense again, including management and engineering supervision, legal, clerical, transportation and similar items, 15 per cent, amounts to \$13,600.00, making a total of \$104,600.00. The concrete item in that estimate of \$6,000.00 I have depreciated 50 per cent, which would make the direct depreciation \$3,000.00, and to that I have added its share of the overhead item, amounting to \$450.00, so that I have deducted, in figuring [792] the reproduction, \$3,450.00, making the reproduction cost less depreciation, \$101,100.00. The lateral system, not having been able to see that, and not having any detail on it, I have omitted it also.

The Court: We will recess now until 1:30.

(Whereupon, the Court took a recess in this cause until 1:30 o'clock p.m.)

Yakima, Washington, February 17, 1947

1:30 o'Clock P.M.

(All parties present as before, and the trial was resumed.)

Direct Examination

(Continued)

By Mr. Powell:

Q. I believe when you stopped, Mr. Dibble, you had given us the reproduction cost new less depreciation of the canal, the irrigation canal, had you not?

A. Yes.

(Testimony of Barry Dibble.)

Q. What was the total amount that you had for the portion of the transmission line from Coyote Junction to the pumping plant, the pumping plant and structures, and the irrigation canals, the depreciated cost, the depreciated value, as of April 1, 1943?

A. The total reproduction cost of those items is \$274,600.00, reproduction cost less depreciation is \$161,000.00, which, [793] figuring back, gives a weighted average per cent of condition as 59 per cent.

Q. Now, is that as of any special date?

A. That is of April 1, 1943.

Q. Pardon? A. April 1, 1943.

Q. The figures that you have given us for the power plant, as of what date are they?

A. October 1, 1943.

Q. What, Mr. Dibble, is the rated capacity of the power plant? A. 2100 kilowatts.

Mr. Ramsey: I didn't get that.

A. 2100 kilowatts.

Q. That is the rated capacity of the plant, sir?

A. Yes.

Q. What does that mean?

A. Well, that is the rating of the machine by the manufacturers. It's somewhat of a nominal value, because it doesn't necessarily represent the limit of load which the units can carry, and do carry, but it's a convenient figure to use in comparing different plants.

Q. Now, did you examine the power canal when you were there? A. Yes.

(Testimony of Barry Dibble.)

Q. By the way, what date did you see the canal?

A. It was January 28th. [794]

Q. Can you state from your observations and from the reading on the gauges whether the canal was nearing low stage at that time, of the water in the river?

A. Yes.

Q. Was it?

A. It was rather low; quite low.

Q. And have you obtained any information concerning the condition of the canal in '43, Mr. Dibble?

A. Yes, I've examined the profiles and sections of the canal that I was able to get, and supplemented them with what I was able to see on my visit to the canal.

Q. Now, have you made a study of the method of dividing the power plant property values between power and irrigation?

A. Yes.

Q. On what basis did you do that?

A. On the basis of the pro-ration of the kilowatt hours used for irrigation, or required for irrigation, and those that are available for sale.

Q. In what percentage did you make that division?

Mr. Ramsey: That is objected to, if the Court please, for the reason that this witness's testimony as to any experience he's had on allocation between irrigation and power has been on the basis of the allocation of cost, not allocation of value.

The Court: I'll overrule the objection. [795]

Mr. Ramsey: Exception, if the Court please.

The Court: Exception allowed.

(Testimony of Barry Dibble.)

A. The allocation is 16.7 per cent to irrigation, and 83.3 per cent to commercial power.

Q. Mr. Dibble, you made some tabulations, did you, as to the amount of power produced at the power plant, and its relationship to the flow in the river? A. Yes.

Q. Where did you get the information to make the tabulations?

A. From the log sheets that were identified here on the first day of the trial.

Q. And specifically referring to the sheets, do you have reference to the yellow sheets concerning 1942?

A. The yellow sheets concerning 1942, and the tabulation in the bound book for 1945.

Q. Did you also have available to you the exhibit number 10, the river gauge readings at Trinidad? A. Yes.

Mr. Powell: I would like to have an identification marked, your Honor.

(Whereupon, schedule showing output of Priest Rapids Generating Plant was marked Defendant's Exhibit No. 16 for identification.)

Q. Mr. Dibble, I hand you defendant's identification 16, and will ask you if you know what it is.

A. It is a schedule showing the output of Priest Rapids generating station, and the flow of the Columbia River at Trinidad. It applies to the year 1942. I notice the words "monthly averages" have

(Testimony of Barry Dibble.)

been inserted there. These are not monthly averages, except as to the flow of the river.

Q. They are the total?

A. The total columns, showing the output at Priest Rapids, are totals for the months and total for the year.

Mr. Powell: We offer the identification in evidence.

Mr. Ramsey: Objected to, if the Court please, upon the same grounds as objections to similar compilations; specifically, upon the ground that this covers only the year 1942, whereas there have been brought in court and made available for the tabulations of these witnesses 1937 through 1942, and if there is to be a tabulation of the data brought into court, then it should be a tabulation for the entire period, and not of a selected year by the defendants.

The Court: The witness prepared this? I am not sure that the record shows it was prepared by him or under his direction.

Mr. Powell: Who prepared this identification 16? A. I prepared it. [797]

The Court: The objection will be overruled, and the government allowed an exception. The exhibit will be admitted in evidence.

(Whereupon, Defendant's Exhibit No. 16 for identification was admitted in evidence.)

(Whereupon, schedule showing gauge readings was marked Defendant's Exhibit No. 17 for identification.)

(Testimony of Barry Dibble.)

Direct Examination

(Continued)

Q. I hand you defendant's identification 17, Mr. Dibble, and will ask you if you know what it is?

A. This is the output of Priest Rapids generating station, the gauge readings and the head and the Columbia River flow. The columns, except for the Columbia River flow, are at Priest Rapids. The Columbia River flow is at Trinidad. This sheet also uses the words "monthly averages" and the term "monthly averages" for 1945 is correct in this case, except for the column headed "net output." The net output of kilowatt hours is the totals for each month and the total for the year.

Q. Who prepared the exhibit, Mr. Dibble?

A. I prepared this exhibit.

Q. And from where did you get the information?

A. The information in this case came from the bound volume in which the records of the power plant have been kept. [798]

Q. The book identified by Mr. Yeager?

A. Yes, and from the United States Geological Survey reports on water flow.

Q. Are there gauge readings on the tabulation?

A. The gauge readings, I have not used the gauge readings that are on the tabulations of the Geological Survey. The gauge readings that show here are the gauge readings at the Priest Rapids power plant.

(Testimony of Barry Dibble.)

Q. How many different gauge readings?

A. The canal gauge and the tail race gauge are shown here.

Q. And can you state whether or not these figures represent the first complete calendar year when the records were available here, according to the testimony, Mr. Dibble?

A. Yes, 1945 is the first year in which the gauges have been reported in this log for one entire year.

Mr. Powell: We offer defendant's identification 17 in evidence.

Mr. Ramsey: Objected to upon the same grounds as the objection to exhibit number 16, and upon the further ground that the bound volume referred to by the witness from which the compilation is made contains the records also for the years 1943 and 1944, and presumably for '46, and that this is simply a selected year picked by the defendants to show the record; for the further reason that the total is for a period two years after the plant [799] was taken over by the government.

The Court: The objection will be sustained on the last ground, that the period referred to here is subsequent to the taking. I have in mind particularly the output of the plant under different operation and different circumstances, and subsequent to the taking.

Mr. Powell: I might state, if your Honor please, that the purpose is primarily to show the relationship between the gauge readings, the volume in the river, and the output. We have prepared other ex-

(Testimony of Barry Dibble.)

hibits based upon this same identification. However, I appreciate what counsel says, but we don't have the gauge readings for 1942 or up until the plant was taken over in 1943. There were none available, and we have selected the closest year.

The Court: Well, I think that I would be inclined to admit the gauge readings in the river there for this year, which is the first year, as I understand it, for which they are available, but I don't think it would be proper over the objection of government counsel to put in the output of the plant during 1945. I hardly see how it would be possible to put it in and not have it in for all purposes as far as the jury is concerned.

Mr. Powell: Then may we ask leave to remove that first column, and then if the Court desires, redraw the [800] exhibit with the first column omitted?

The Court: Yes, you might present the exhibit with the first column out of it.

Direct Examination

(Continued)

Q. Mr. Dibble, have you prepared a block graph showing the relationship between the power output in 1942, as shown on the tabulations, and the output of the power plant as shown by the exhibits in evidence, particularly exhibit 16? A. Yes.

Q. Would you get it, please?

Mr. Powell: This may be a little out of order, if your Honor please, because 17 has not been ad-

(Testimony of Barry Dibble.)

mitted and re-introduced, and this will contain some figures as to the exhibit which is to be amended.

(Whereupon, Graph was marked Defendant's Exhibit No. 18 for identification.)

The Court: I assume, however, that the witness had the information independent from this exhibit; he got it from other original sources, didn't he?

Mr. Powell: It contains information taken from the two exhibits he has identified and tabulated.

The Court: But what I mean is that all the data in 17 was procured by the witness from a source other than 17. [801]

Direct Examination
(Continued)

Q. You have taken the information from where to compile it?

A. It's all come directly from the sheets that have been identified by Mr. Yeager.

Q. I hand you defendant's identification 18, Mr. Dibble, and will ask you what it is?

A. It shows the river flow and output as monthly averages at the Priest Rapids generating station.

Q. And for what time?

A. For the years 1942 and 1945.

Q. You have the output in a separate place, do you, Mr. Dibble? A. Yes.

Q. That is, for 1945? A. Yes.

(Testimony of Barry Dibble.)

Q. And that can be removed from the graph, can it? A. Yes.

Q. That will leave what in reference to 1945?

A. That will leave the river flow, the gauges, and the head at the power plant.

Q. For 1945?

A. For 1945. For 1942 it will leave the river flow and the output in kilowatt hours.

Mr. Powell: We offer identification 18, if your Honor please, and request leave to remove the portion of [802] it which refers to the output of the plant in 1945. I might state, if your Honor please, this is primarily for the purpose of illustration, and not to establish the facts, I mean the different output, or the river gauges, they being on the tabulation.

Mr. Ramsey: Which portion does counsel propose to remove?

Mr. Powell: We offer the identification.

Mr. Ramsey: Objected to on the same general grounds that counsel is presenting a single year out of data which is available for many years.

The Court: The objection will be overruled and the identification admitted with the understanding that the showing of the power output in 1945 of the power plant will be deleted, if you will show the clerk how that will be done. Can you just paste something over there?

Mr. Powell: I think it will show through, your Honor. I think it can just be cut along the line.

(Whereupon, Defendant's Exhibit No. 18 for identification was admitted in evidence.)

(Testimony of Barry Dibble.)

Direct Examination

(Continued)

Q. Mr. Dibble, will you come down, please, to the board, and point out to the jury and explain what the exhibit number 18 is? [803]

A. The exhibit 18 is intended to illustrate how the river flow affects the gauges and the power output of the power plant at Priest Rapids. In the upper left hand corner of the exhibit is shown the average monthly flow in second feet of the Columbia River at Trinidad for each month of the year. Usually, in fact practically always, the flow of the Columbia River is quite low in the winter months, and is shown here as practically uniform during the months of January, February, and March. Then in April the Columbia River begins to rise, and goes up step by step until the flood occurs in June. June is usually the month of maximum flow. Then the river drops off somewhat in July, more in August, drops back until September, October, November and December are low with some variation.

The power production at Priest Rapids power plant is shown in the lower left hand corner for the same year, 1942. It varies somewhat and considerably with the river. In the month of January the production was more than it was in February and March, and this is net output in kilowatt hours, and is somewhat affected by the fact that February is a short month and it has three days less than January does, and therefore normally is a little

(Testimony of Barry Dibble.)

lower on a graph of this kind. Then as the river rose the production was increased until in June the river got [804] so high that water backed up in the tail race, as shown in the next set of graphs, and the production actually dropped off in spite of the fact there was maximum water supply. In July and August it comes back up again. In the winter months of the year it drops off.

This other vertical line of graphs on the right hand side of the sheet shows for the year 1945. Now, the same effect occurs; in this case, the first four months of the year were very low, also the last three months. In between, the river rose to the peak in June, dropped off in July and down in August, down to the low stages. In 1945 gauge readings were available, and this portion of the graph, the second set of curves from the top of the sheet, shows the tail race and canal gauge readings. This upper one is for the power canal leading to the power house from the Columbia River. As the river dragged along here in the first four months of 1945 the gauge reading in the canal was about uniform, and as the river rose the gauge readings increased until peak in June, and dropped off in the later months of the year, and the same way the tail race goes, but the tail race rise was proportionately much greater in June than was the canal gauge reading. As a result, the net head at the power plant was obtained by subtracting the canal gauge from the tail race gauge. [805]

(Testimony of Barry Dibble.)

Now, in the third chart on the right hand side of the sheet is shown the result of that subtraction. This third chart gives the net head at the power plant as averaged for each month. For eleven months it did not vary very much, but in June, when the river got very high, the head available for power production dropped off, and that affects the possible power output, because when the head gets low the turbines can't pass enough water to generate the power of which they are capable at other times, and the effect is shown here in June of 1942.

Mr. Powell: The clerk has removed the portion of identification 17, your Honor, and we would again reoffer it. The production of power in 1945 has been removed from the exhibit.

Mr. Ramsey: The same objection.

The Court: The identification will be admitted, and the government allowed an exception.

(Whereupon, Defendant's Exhibit No. 17 for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Do you have prepared another graph, Mr. Dibble, showing the relationship between river flow and power production? A. Yes.

Q. That, however, has 1945 figures on it, hasn't it? [806]

A. Well, it has some points that come off the 1945 tabulation.

(Testimony of Barry Dibble.)

Q. Does it show anything like the total output of the plant?

A. Well, they come from that column, yes.

Q. Where have you received the information from which you prepared this graph?

A. It is likewise from these log sheets and the log book, and from these exhibits.

(Whereupon, graph showing relationship between river flow and plant capacity was marked Defendant's Exhibit No. 19 for identification.)

Direct Examination

(Continued)

Q. I hand you defendant's identification 19, and will ask you what it is, Mr. Dibble.

A. That is a graph showing the relationship between river flow and plant capacity of the Priest Rapids generating Station.

Q. There are various points indicated on the graph; what are they?

A. They're the average months as shown in exhibits 11 and 12, is it, or 10 and 11——

Q. No, the ones just identified, 16 and 17.

A. 16 and 17, and some additional daily points in which the capacity of the power plant in kilowatts is related to the flow of the Columbia River at Trinidad. [807]

Q. The 1945 points on the graph, however, are taken from the column eliminated on exhibit 17, is it not?

(Testimony of Barry Dibble.)

A. That is one of the columns used in selecting these points.

Mr. Powell: We offer the identification, if your Honor please. I realize that it does contain some information that we have taken from Exhibit 17.

Mr. Ramsey: Objected to upon all the grounds interposed as to exhibits 16, 17, and 18, and the further reason that there is no way in the world the points for the year 1945 can be eliminated from this exhibit.

Mr. Powell: Can they, Mr. Dibble?

A. Except by pasting something over them, you might.

Mr. Ramsey: Well, I submit the exhibit to the Court as to the impossibility of so doing.

The Court: I hardly see how we could admit an exhibit that is based in part on one that's been excluded already, a portion of it has been excluded. I'll sustain the objection. I might say, however, if it is your purpose to show a relationship between the flow of the river and the power output, I have no objection to showing that as of any date within a reasonable time prior to the taking here, by some other means or some other testimony.

Q. Referring again to identification 19, Mr. Dibble, are the [808] points on here supported by data taken from the exhibits? A. Yes.

Q. With the exception of the 1945 data, which has been excluded from exhibit 17, is that correct?

A. Exhibit 16 is used also by this graph.

Q. Exhibit 16 is the power output and river flow in 1942, is it not? A. Yes.

(Testimony of Barry Dibble.)

Q. And 17 shows the gauge readings, is that correct? A. Yes.

Q. The power output in that year has been removed from the exhibit?

A. From exhibit 17.

Q. Yes. Is the data on identification 19 indicating 1945 taken in toto from exhibit 17?

A. No, the figures on exhibit 17 originate in these other documents, particularly that log book and the Geological Survey report.

Q. Then have you any points on the identification 19 that are taken from years at all prior to 1942? A. No.

Q. All the points there refer to 1942 or 1945, is that right?

A. Yes. The same graph could be developed from data in 1942 and 1943, prior to the taking.

Q. Mr. Dibble, have you formed your opinion, have you been asked to examine the power plant properties and the canal properties and form your opinion as to the valuation on them?

A. I have.

Q. How many different elements did you take into consideration?

A. Well, there are many of them that were involved; the reproduction cost, the condition of the properties, the reproduction cost less depreciation, conditions in the power market, reasonable selling price for available power and energy, the amount of power required for pumping, the cost properly chargeable to power that is used for pumping, the

(Testimony of Barry Dibble.)

reasonable earning capacity of the property as it existed, that is, the power property, as it existed October 1, 1943, the cost of operation and maintenance of the power property, the proper allowance for depreciation reserve on the power property——

Mr. Ramsey: I didn't get that last.

A. The proper allowance for depreciation reserve on the power property, the possible increased output of the generating station that could be secured by more efficient operation, and opportunities that exist to increase the output of the properties over a reasonable, or in a reasonable time.

Q. Mr. Dibble, is any one of the elements you have detailed [810] controlling in fixing value?

A. No.

Q. What was the market condition, condition of the power market, in 1943?

A. In 1943 there was a very excellent power market.

Q. Did that have any relationship to the Hanford Project as such?

A. No, the market existed entirely independently of the Hanford market, the Hanford Project.

Q. The values that you have determined as to these properties, do they have any relationship to the Hanford Project? You haven't fixed the values of this property as a value to the Hanford Project, have you? A. No.

Q. Are you prepared, Mr. Dibble, to give your opinion as to the values of these various properties that we have mentioned? A. Yes.

(Testimony of Barry Dibble.)

Q. Can you, in your opinion, Mr. Dibble, allocate the portion of the power plant value to irrigation, on which you applied the percentage?

A. Yes.

Q. Having in mind the question that has been asked in detail concerning the value of property, what, in your opinion, was the value of the power plant properties, [811] including the canal, transmission line, and the power plant structures and equipment, as of October 1, 1943, excluding the portion which you have allocated to irrigation?

A. \$400,000.00.

Mr. Ramsey: May the record show that the same objection is made to the testimony of this witness as to value that was made to preceding witnesses, that is, that this could not be the proper basis of valuation.

The Court: Yes, the objection will be noted, and the government allowed an exception. I assume that the question as to value means fair cash value?

Mr. Powell: I assume so; I shortened it by saying "having in mind the usual elements."

The Court: Well, I assume the witness knows the measure of value; it isn't necessary to go into detail on that.

Direct Examination

(Continued)

Q. Then, Mr. Dibble, your opinion of the fair cash market value of the power properties, exclud-

(Testimony of Barry Dibble.)

ing the percentage you have allocated to irrigation, that is that amount in cash a buyer ready, able and willing, but not required to buy, would pay to a seller ready, able and willing, but not required to sell, as of October 1, 1943, both being fully informed? [812]

A. Yes, that is the basis.

Q. And that value of the power plant properties was what?

A. Excluding the portion that is allocated to pumping, it is \$400,000.00.

Q. And having in mind that same question as to the measure of the value, what, in your opinion, as of April 1, 1943, was the value of the irrigation properties, that is, that portion of the power plant and transmission line allocated to irrigation, and the transmission line from Coyote Junction to the pumping station, the pumping plant and structures, and the irrigation canals?

A. That is \$240,000.00.

Mr. Powell: You may examine.

Cross-Examination

By Mr. Ramsey:

Q. Mr. Dibble, as a part of your investigation for the purpose of determining the value on these properties, did you acquaint yourself with the past history of that power plant?

A. Well, I am somewhat familiar with it. I have heard a good deal of discussion about the property.

(Testimony of Barry Dibble.)

Q. Did you acquaint yourself with the operations of the two preceding companies who had the ownership of this power plant before the Priest Rapids Irrigation District acquired it?

A. Not into any detail. [813]

Q. Didn't you consider that the past history of that plant with regard to whether it showed a profit or loss was important?

A. Well, not the early history, no.

Q. Now, what is the basis of your allocation of 16.7 per cent of the generating value of that plant to irrigation?

A. That is based upon the proportion of the energy which is available for use to the amount of energy required for pumping.

Q. And was that for the year 1942 only, or for all of the years that you had access to records?

A. Well, it is based upon the requirement for pumping, which in 1942 was approximately normal.

Q. Did you check on prior years and the amount of power consumed for pumping in prior years, in determining what was normal demand?

A. Yes, I had some of the figures.

Q. I ask you to examine your copy of exhibit 14, if you have it.

A. I think I do not have a copy of that exhibit.

Q. Do you now have a copy of that exhibit?

A. Yes.

Q. I call your attention to the column headed "District use." [814]

A. Yes.

Q. 336,619 kilowatt hours.

A. Yes.

(Testimony of Barry Dibble.)

Q. And I call your attention to the column headed "Coyote use." A. Yes.

Q. 3,141,096 kilowatt hours. A. Yes.

Q. If my mathematics is correct, that gives a total of 3,477,715 kilowatt hours used for district use. A. Yes.

Mr. Cheadle: If we may interrupt, is it the contention of government counsel that the 336,619 kilowatt hours is allocable to irrigation, that being district use at the power plant, am I correct?

Mr. Ramsey: If it is used for district purposes and uses, then it is properly chargeable to irrigation, I presume; it certainly isn't available for sale as surplus power if it is devoted to uses of the District itself.

The Court: Well, proceed with the cross examination.

Cross-Examination

(Continued)

Q. Is 3,477,715 kilowatt hours $16\frac{2}{3}$ per cent of a total generated of 12,238,400 kilowatt hours?

A. I have based my figures not on the total generated, but the total output, which is a somewhat different figure, and the difference between the generated and the output is largely this column that is marked "District use." In other words, the column that is marked "District use" is the power that is used at the power plant in connection with power plant operations, for the cottages there, and for some other possible uses. It has been eliminated from—

(Testimony of Barry Dibble.)

Q. It is also the power used in the plant, isn't it, for various purposes? A. Yes.

Q. You're eliminating that and marking it up as a part of the power that is available for sale?

A. Yes.

Q. Don't you propose to use any power in the plant itself in the future?

A. The power is always necessary at the power plant.

Q. Yes.

A. But in order to simplify the figures, it is easier to work with the net output of the plant, in which the number of kilowatt hours generated has been reduced by this power plant use. There is a distinction between generated energy, and the output of the power plant, which is a different figure. [816]

Q. Well, let's see if we've gotten ourselves straightened around here and understand each other. I understand that the first column, generated kilowatt hours, refers to the total amount of power generated by the plant during the year 1942, is that correct? A. I presume that's it.

Q. Now, then, if you deduct the column "District use" from that, you would have a smaller total of generated power, wouldn't you?

A. That's right, that plus the output of the plant.

Q. The output of the plant?

A. The power that leaves the plant.

(Testimony of Barry Dibble.)

Q. Well, then, if we don't add this District use column to the other power used down at the pumping plant, we reduce the amount of generated power by that much in any event, don't we?

A. Yes.

Q. Well, then, if we deduct the "District use" column from the total of 12,238,400 kilowatt hours, we get a net of 11,901,781, is that correct, or approximately so?

A. Yes. May I refer you to exhibit 16, which develops those figures?

Q. Yes. That is the total shown there as "net output"? A. Yes.

Q. All right. Now, 3,141,096 kilowatt hours $16\frac{2}{3}$ per [817] cent of 11,901,781? A. No.

Q. Then just what is the basis of your allocation?

A. It's possible to materially improve the operation of the power plant and develop considerably more energy than has been developed in the past.

Q. So now you're determining the total amount of power not by what has been generated, but by what in your opinion can be generated? A. Yes.

Q. Well, now, as a matter of fact the year 1942 was the highest production year so far as output of power was concerned that the Priest Rapids plant had, wasn't it? A. Yes.

Q. By far, or at least by considerably?

A. By some.

Q. You now propose to increase that over and beyond that point? A. Yes.

Q. And how do you propose to do that?

(Testimony of Barry Dibble.)

A. By more careful operations, to take advantage of the water that is available and the head conditions at the power plant.

Q. You believe that the P. P. & L. operators are not efficient? [818]

A. No, but I think the production——

Mr. Powell: If your Honor please, I think counsel has already objected to the matters after 1943; I think it should apply to him as well as us.

Mr. Ramsey: If the Court please, this is cross-examination.

The Court: Yes, I think it should be limited to the figures before 1943.

Mr. Ramsey: This is 1943, that the Pacific Power and Light went in, and 1942 that we're inquiring about.

The Court: All right, if they were there you can ask about it.

Cross-Examination

(Continued)

Q. You don't feel that the P. P. & L. operators were efficient in their operation of that plant?

A. On 1942?

Q. Yes, and 1943.

A. This was not being operated by the Priest Rapids Irrigation District at that time.

Mr. Ramsey: When does counsel contend that the power plant was taken over?

Mr. Powell: October 1, 1943.

(Testimony of Barry Dibble.)

Q. You have studied the figures for subsequent years, haven't you, after it was taken over and operated by the Pacific Power and Light?

A. Yes, [819] I've examined it.

Q. And in the light of the figures which you found there under the operation of the P. P. & L., you still feel that the operation in 1942 and prior years was inefficient? A. Yes.

Q. Did you find any greater production in any subsequent year, of power generated at that plant, than was generated there in 1942?

Mr. Powell: Objected to, if your Honor please.

The Court: I'll overrule the objection.

A. I found that important quantities in excess of what was generated could have been generated.

Q. In your opinion? A. Yes.

Q. Further, in your opinion, the P. P. & L. operators were still inefficient in their operation of the plant?

A. Well, they could have gotten more energy from the plant.

Q. Yes, and on the basis of your opinion as to the inefficiency of that operation, you are making your allocation of $16\frac{2}{3}$ per cent of the power generated as a proper amount to be allocated for irrigation? A. It is based on my opinion.

Q. Well, now, let's go back and study the figures a little bit. Just what per cent of 11,901,781 net kilowatt hours is the 3,141,096 kilowatt hours used [820] for the operation of the Coyote pumps alone?

A. That's about 26 per cent.

(Testimony of Barry Dibble.)

Q. About 26 per cent. Now, you propose to so increase the power generated that the amount used for pumping purposes would be only $16\frac{2}{3}$ per cent?

A. Yes.

Q. And how much of an increase would that make in the net output of that plant up there?

A. That would be about 60 per cent, or thereabouts.

Q. You would have to increase the output of that power plant 60 per cent in order to make $16\frac{2}{3}$ per cent a fair allocation as to irrigation, wouldn't you?

A. Yes.

Q. Do you think that that plant was operated 60 per cent inefficiently?

A. I think that this amount could reasonably be obtained from it.

Q. From conditions as they existed up there when the government took over?

A. Well, it would require some improvement in various places.

Q. Oh, you propose to rebuild the plant, or add additional facilities, or increase the facilities already existing?

A. It is obvious that minor changes can be made that will improve the plant, and that any purchaser of the plant, [821] would be cognizant of.

Q. Yes. Now, you have heard the court repeatedly rule in this proceeding that we would take this property as it was, without change after the government took it over on any proposed development there?

A. This is the property as it was.

(Testimony of Barry Dibble.)

Q. This is the property as it was, and out of that property as it was you propose to increase the production of power for sale 60 per cent above the highest year that it ever knew under anybody's operation?

A. Well, I'm not, of course, familiar with the very early years, but this is compared with 1942.

Q. Which was the highest year you had any record of?

A. It is the highest year that I worked with.

Q. It was also an unusual year as to river flow, wasn't it?

A. Not particularly unusual. All of these years are relatively low through this period.

Q. Much better than 1945, for instance, by comparison, wasn't it?

A. It was some better, yes.

Q. And of course your chart doesn't reflect any other years, does it?

A. No.

Q. So your allocation of what would be a fair per cent of the value of that property to be [822] allocated to the irrigation of these lands down here is predicated upon the assumption that you can produce from that plant 60 per cent more power than ever has been produced from that plant in any year prior to 1942?

A. 60 per cent more than 1942.

Q. Yes, and 1942 was the highest year you had and knowledge of, wasn't it?

A. Yes.

Q. Before or after?

A. That's right.

(Testimony of Barry Dibble.)

Q. Now, Mr. Dibble, did you take into consideration that there was only about eleven or twelve hundred acres of the land in the Priest Rapids Irrigation District that was being irrigated from those pumps in 1942 and 1943?

A. Yes, I was aware of that.

Q. Yes. Did you also take into consideration that there was other lands within the District that were entitled to demand delivery of water from those facilities?

Mr. Powell: I object, if your Honor please, not being a matter within the province of the jury or within the province of this case. It is a matter of valuing the property.

Mr. Ramsey: I submit this witness has made an allocation of evaluation for irrigation.

The Court: Overruled. [823]

A. I knew there were more lands. I don't know their status as regards water rights.

Q. You've heard the testimony that additional lands were being sold, to be utilized in the irrigation district there; you heard that testimony?

A. Well, I'm not sure that I fully understood just what the situation was.

Q. Before you made this allocation for irrigation purposes did you inform yourself of what lands were entitled to delivery of water through the pumping facilities of the District? A. No.

Q. You just took the amount of water delivered in 1942 and let it go at that, didn't you?

(Testimony of Barry Dibble.)

A. It was obvious to me that the amount of water pumped in 1942 was enough to take care of a very considerably additional amount of land.

Q. And on what did you base that conclusion?

A. On my general knowledge of irrigation requirements.

Q. Yes. Did you investigate to find out whether all the land supposed to be under irrigation was getting water or not?

A. Well, I knew from the testimony that some 1200 acres were irrigated.

Q. Did you investigate to determine whether there was one [824] drop of water ever got back to the end of the Priest Rapids canal or not, of the amount of water pumped in there?

A. I wasn't there, and don't know.

Q. And you did not investigate that point. Did you investigate to find out whether men who owned lands in that District and were entitled to delivery of water had been compelled to cease irrigating a portion of their acreage because they couldn't get water to them with the amount pumped there in 1942 you did not make that investigation. You just assumed that the amount of water pumped into the ditch in 1942 was adequate to take care of all the demands of the lands in the Priest Rapids Irrigation District that was entitled to be irrigated from the facilities of the District?

A. I assumed that the number of kilowatt hours that would be required was represented fairly well by that figure.

(Testimony of Barry Dibble.)

Q. Now, Mr. Dibble, you were a long, long time with the Bureau of Reclamation as an engineer, weren't you? A. Yes.

Q. And during all the time you were with the Bureau did you ever assume in any instance anything with respect to what the demands of land might be for irrigation until you made a complete investigation? A. Yes. [825]

Q. You did assume it? A. Yes.

Q. On what basis did you assume it?

A. On the basis of reasonable duty of water on the land.

Q. Did you make any investigation of the amount of seepage losses on the amount delivered to the land, or did you assume that when water was put in one end of the ditch, all of it came out at the other? A. No, I did not assume that.

Q. You did not assume that, you bet you didn't; you did make an investigation to see how much water was getting to the land in every instance.

A. I thought you meant in regard to this Priest Rapids.

Q. I mean in any instance.

A. Well, it is quite customary to make assumptions as to the duty of water at the head of the canal and at the land.

Q. Without any information whatever or any investigation whatever of what the leakage losses might be?

A. Oh, you would need some information, yes.

(Testimony of Barry Dibble.)

Q. Yes, you would need some information.

A. And there was testimony here in this case regarding it.

Q. I heard it. There was several different pieces of testimony. Now, did you take into consideration that these lands that had been recently sold in that District would [826] be entitled subsequent to 1942 to demand water from the facilities of the District?

A. I'm not familiar with the sales.

Q. Did you inform yourself or attempt to inform yourself on those matters? A. No.

Q. In other words, you simply assumed, Mr. Dibble, that the amount of energy that was consumed in 1942 in pumping was adequate to continue to supply all of the water needed by the irrigation district, didn't you?

A. I assumed that this was a fair allocation.

Q. Yes.

The Court: We'll recess for about ten minutes now.

(Short Recess)

(All parties present as before, and the trial was resumed.)

Cross-Examination

(Continued.)

By Mr. Ramsey:

Q. Now, Mr. Dibble, the generation of power in that plant is very materially affected by the amount

(Testimony of Barry Dibble.)

of water in the Columbia River, and also by weather conditions, isn't it?

A. It is affected by the amount of water in the river.

Q. Well, we'll take that up first. In extreme high water do you get a peak production? A. No.

Q. In extreme low water do you get a peak production? A. No. [827]

Q. As a matter of fact, 1942 was the first year that that plant hadn't been shut down for one or more months during the year, wasn't it?

A. Not to my knowledge, particularly, as regards water supply.

Q. Well, I'm not attempting to determine the cause at this time for the shut down, but as a matter of fact, 1942 was the first year that that plant wasn't shut down for one or more months of the year, wasn't it? A. I don't know.

Q. Now, going to the matter of weather conditions, what would be the effect out there in extremely cold weather of icing up?

A. Extremely cold weather is normally the period of low water in the Columbia River.

Q. Well, mightn't the water in the canal be frozen to a considerable depth?

A. Well, there might be some icing in the canal, but I think not heavy ice, if the water is kept moving.

Q. Well, as a matter of fact, the water doesn't move very rapidly in that canal, particularly in the lower regions, does it?

(Testimony of Barry Dibble.)

A. Well, in the lower regions there could be ice without handicap to the plant. [828]

Q. Now, in fixing your value you assumed first these things that we have just gone over. You also assumed that in 1943 there was an excellent power market, didn't you? A. Yes.

Q. Would the fact that the area was already served by the P. P. & L. and the Bonneville in any way affect the market?

A. Well, it has an influence on the market.

Q. Yes. In other words, what did you assume would be the selling price of that power?

A. 75 cents per kilowatt of firm power, and 2½ mills per kilowatt hour.

Q. 2½ mills per kilowatt hour. Now, let's see if I have that straight. You propose to sell that at a price of \$9.00 per kilowatt year, plus 2½ mills per kilowatt hour, is that correct? A. Yes.

Q. And on what do you base that rate?

A. Well, that is my opinion of the rate at which it could be sold.

Q. Do you know what the rate of Bonneville is?

A. I have some acquaintance with it.

Q. Well, can you tell us what that rate is?

A. They have a rate of about that same thing.

Q. And where did you propose to sell this power, Mr. Dibble? [829]

A. Well, I didn't have any one place picked out. It is, I think, a reasonable price for market conditions such as existed at that time.

(Testimony of Barry Dibble.)

Q. Well, now, the Bonneville and the P. P. & L. build their lines in to where the consumers can take power, don't they? A. No, not altogether.

Q. Well, what do you mean by not altogether?

A. Bonneville delivers power at some point on the system, and the customer takes the power from there.

Q. Well, the Bonneville power system is built in to practically all of the towns, is it not, and to a point available to the R.E.A.'s?

A. Points available to the R.E.A.'s; I think the towns are not all built into by any means.

Q. I didn't understand what you said.

A. I think by no means has Bonneville built into all the towns.

Q. Well, was it your idea that any consumer of this power you propose to generate out there would build its own line to the plant, or to the line as it now exists, to tap on?

A. That is the basis of my assumption, yes.

Q. Your closest consumer would be what, the R.E.A. mentioned in some of the other testimony some 20 or 25 miles away? [830]

A. Well, there's several points of connection; the Pacific Power and Light Company has a connection there now, the Bonneville Power Administration is in that same vicinity.

Q. Well, do you propose to charge the Bonneville Power Administration this rate on your excess power, and collect it? Do you think you can do that?

(Testimony of Barry Dibble.)

A. I think at times under conditions that existed then they might have been very glad to take it.

Q. In other words, you believe the Bonneville would pay you that amount and then sell it out at the Bonneville figure?

A. I'm not assuming any particular customer.

Q. I understand that. The P. P. & L. did build a line; do you know how much they were paying?

A. I've seen the contract, yes.

Q. Yes; well, it wasn't this much, or anything like it, was it?

A. Well, it was a price that was relatively low.

Q. Well, the P. P. & L. was actually paying $1\frac{3}{4}$ mills, wasn't they, for the power they got from that source?

Mr. Powell: We object to this line of questioning for the reason the power company is not a party to this action, and the contract was taken when the property was taken, so we understand we'll value the properties taken without any burdens.

The Court: I'll overrule the objection. It [831] goes to the value of the excess power.

Cross-Examination

(Continued.)

Q. That is a fact, isn't it?

A. I've seen the contract, yes.

Q. Instead of paying \$9.00 per kilowatt plus $2\frac{1}{2}$ mills per kilowatt hour, the P. P. & L. was paying $1\frac{3}{4}$ mills per kilowatt hour?

A. Yes.

(Testimony of Barry Dibble.)

Q. There was no consumer other than the P. P. & L. closer than this R.E.A. that we've mentioned, is there?

A. Well, there are consumers, yes, but hardly consumers that could be expected to build a line, unless they came into an R.E.A.

Q. Now, it would cost this R.E.A., on your valuation per mile of line, around \$130,000.00 to build a line up there to get power, wouldn't it?

A. Well, I don't believe they would have needed a 66,000 volt line.

Q. Pardon?

A. An R.E.A. would hardly have needed a 66,000 volt line.

Q. Well, what would be your best judgment of what it would cost to build 20 or 25 miles of line in there?

A. Oh, probably \$50,000.00 or more, that is, fifty or sixty thousand dollars.

Q. Well, let's take your price that you propose to market [832] this at, and let's take your production capacity that you've stepped this plant up to; now, what gross annual revenue would that produce?

A. I've calculated about \$49,000.00.

Q. That's gross? A. Yes.

Q. What net revenue would it produce?

A. I have \$20,000.00.

Q. You figure, then, that it would cost about \$29,000.00 to operate and build up a maintenance fund?

(Testimony of Barry Dibble.)

A. Yes, that takes care of the depreciation reserve.

Q. Yes. Now, getting back to the reproduction cost which you placed on the power plant up there, together with its installations, I'm not sure that I understood the method by which you reached your figure there. I believe you figured your reproduction cost at \$513,500.00? A. \$514,500.00.

Q. 514; now, just how did you obtain that figure?

A. Well, I developed the cost per kilowatt of a number of power plants of a size not very remote from the size of this Priest Rapids plant; examined them from conditions affecting the construction; examined them from the effect that the head would have on the cost; determined what would be a reasonable cost per kilowatt of a plant of the general character of the one at Priest Rapids, and [833] then determined what the cost of a 2100 kilowatt plant would be under those conditions.

Q. In other words, you did not go into the matter of reproduction cost of this particular plant at all. You simply averaged over a number of other plants, and said "Well, I think an average plant of this character would cost so much with its installations"?

A. Well, I of course went into the figures of some of the equipment and checked it against these different studies.

Q. Yes; now, in your average plant, what was the cost of the structure?

(Testimony of Barry Dibble.)

A. I did not make a separate determination of the cost of the structure.

Q. In your average plant what was the cost of the installations?

A. These costs are all-inclusive; they include all the various features of the plants.

Q. In other words, for reproduction cost purposes you simply said "Well, power plant number 1, and 2, and 3, and 4, and 5, cost so much money, and the average of that is so much, and that's what I'm putting as the reproduction cost of this plant"?

A. No, I didn't do it that way.

Q. Well, just how did you do it?

A. I arrived at these plants' costs, took [834] into account the various changes in conditions which have occurred since they were built, took into account features as they relate to these plants, and arrived at a fair cost per kilowatt of a plant of this character.

Q. Well, for the purpose of arriving at a fair cost per kilowatt, you did just what I said a minute ago, didn't you? You studied the cost per kilowatt of particular plants?

A. Yes.

Q. And then averaged them off?

A. No, I didn't average them.

Q. You just said "This will be an average"?

A. It's not possible to make an average.

Q. I wouldn't think so, but you simply considered various other plants that produced electric power, and figured that it would cost about so much per kilowatt to construct such a plant as this?

A. Under these conditions, yes.

(Testimony of Barry Dibble.)

Q. So your reconstruction cost doesn't bear the slightest relationship to the actual cost of replacing that plant out there as it actually was?

A. I think it does. I find that method a great deal more accurate and useful than going into a great deal of detail. You can check the cost and get at a very good estimate. [835]

Q. Well, do you figure the costs on a plant that way, or do you figure the value on a plant that way; now which?

A. This is reproduction cost.

Q. Yes, I know, but I'm asking you now, in using this formula do you ordinarily use it in figuring the cost of a plant?

A. In figuring the cost of a plant.

Q. If you were going out to supervise the construction of a hydro-electric plant, is that the method you would use for it?

A. As an estimate of the cost.

Q. Without going out to see how much excavation work to be done, construction, structural work to be done, and so forth?

A. Well, of course the general conditions at the site have some influence on it. The cost of various power plants have a general relationship that can be very well estimated in this way.

Q. Well, if the actual cost of one of those plants ran excessively high, it would very materially affect its value, wouldn't it? That is, excessively high per kilowatt?

A. Well, it would affect the reproduction cost. That is what I am taking into account here.

(Testimony of Barry Dibble.)

Q. Yes.

A. Yes, if cost was 'way out of line it would affect the [836] value.

Q. And on the other hand, if the actual cost of construction was extremely low, there would be a marked effect there, wouldn't there? A. Yes.

Q. So the whole thing pre-supposes an average condition, am I correct in that, your whole formula pre-supposes an average condition?

A. This isn't a formula.

Q. Well, it is the formula that you used in measuring the reproduction cost of this plant, isn't it?

A. No, you take typical plants and consider them as they are related to this particular plant. It is necessary to make some very definite observations of the property, and to know something about the plants which you used in comparison, and I think these plants that I have used are comparable.

Q. And that, of course, is a matter of opinion, whether they are comparable or not?

A. It is my opinion, yes.

Q. In your opinion they were?

A. Yes; they're all plants that I'm familiar with.

Mr. Ramsey: If the Court please, I wish to move to strike this witness's testimony, and I would like to be heard on it. [837]

The Court: If the jury will step out, please.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

(Testimony of Barry Dibble.)

Mr. Ramsey: The government moves to strike the whole of this witness's testimony on reproduction cost less depreciation as a method of determining value, on the grounds and for the reason that the law permits, in cases of this character, certain methods of reaching and determining value. However, those methods are within very strict lines. Included in the methods of reaching valuation is the reproduction cost less depreciation rule, and under that rule the ultimate value is reached by a formula recognized and approved by law, which is the actual reproduction cost of the particular property in its original condition, at a cost as of the date of taking, less a fair depreciation thereon. It now appears that this witness has used a formula peculiar to himself, and not predicated upon the reproduction cost less depreciation formula recognized by law at all, but upon a determination of the average cost of what he believes to be comparable plants, per kilowatt hour, then from the per kilowatt hour rating of this particular plant he works back by a multiplication of what he assumes to be an average cost of comparable properties, and determines the reproduction cost in that manner. It is not a [838] formula that is approved by law or recognized by any court, and I earnestly urge on the court that it is not testimony that should be submitted to any trial jury. It simply opens up the door for a witness to come in here with any sort of a formula that he has personally developed, and submit it, as has been done in this case, on the theory,

(Testimony of Barry Dibble.)

under the name of reproduction cost less depreciation, when as a matter of fact there isn't an element of actual reproduction cost involved in the formula at all.

The Court: I think that after all we're dealing with the testimony of an expert, and he's expressing here expert opinions, one of which is the cost of reproduction new. I don't believe that any particular method of ascertaining that has to be followed, or that there is any set formula. It must, in the final analysis, in any case, rest on opinion in some respects, for instance, the opinion of the yardage that must be necessarily excavated to reconstruct a canal or lateral, and the amount that it would cost, and what would enter into those various elements, and so on, and so I think that a competent electrical engineer and a qualified expert, and this witness is a qualified expert without any question, uses a method which he states is in his opinion, I think it is admissible. The method by which [839] he arrives at it would affect the weight rather than the admissibility of his testimony. That is the view of the court, at any rate. The objection will be overruled and the government allowed an exception. That is, the motion to strike will be denied, that's what I should say, and the government allowed an exception. Bring in the jury.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

(Testimony of Barry Dibble.)

Cross-Examination

(Continued.)

Q. Now, Mr. Dibble, how do you reach your value on the pumping plant?

A. In a similar way, using the inventories that Mr. Tinling and Mr. Hall testified to, I have set up an estimated plant of the capacity of this plant, and have determined the reproduction cost of a plant of equivalent character that would give equivalent results.

Q. You have not taken into consideration at all the actual cost of the construction of a structure such as the pumping plant down there?

A. Well, it is necessarily involved in the figures that I used. The housing for pumps of this capacity necessarily is part of the whole installation.

Q. You have assumed an adequate structure to house the pumps? A. Yes. [840]

Q. And the motors; adequately built and maintained? A. Yes.

Q. You have assumed adequate installation for the purpose of pumping the required amount of water? A. Yes.

Q. Well, in that assumption did you take into consideration any pumping plants where they had seen fit to couple together in tandem two low head or low lift pumps in order to get the results that one high lift pump would accomplish?

A. Well, that is a little out of the ordinary, of course, but that is not physically uncommon; many

(Testimony of Barry Dibble.)

pumps are built, and one pump is built in two stages, which is in effect what this plant is.

Q. Is it an efficient pumping unit?

A. It could be. I wouldn't say this was particularly efficient in high efficiency, but the fact that the pumps are coupled together doesn't destroy that efficiency.

Q. Does it raise the cost, though, very materially, to the amount of water pumped?

A. Yes; I have taken that in the obsolescence figure. It isn't the type of installation that would be made now.

Mr. Ramsey: I think that's all.

Redirect Examination

By Mr. Powell:

Q. Mr. Dibble, the power contract you referred to is dated in 1940, wasn't it?

A. Yes, I believe so.

Q. And was there a difference in the power market between 1940 and 1943?

A. Very markedly so.

Q. What was the difference?

A. The market had increased very much in 1943.

Q. Market demand?

A. Market demand, yes.

Q. Now, you have indicated in cross-examination a gross revenue of \$49,000.00 and a net of \$20,000.00. What are the items of deductions you have taken into consideration to make up the \$29,000.00?

A. Operation and maintenance, and depreciation and reserve.

(Testimony of Barry Dibble.)

Q. How do you itemize those?

A. For operation and maintenance of the power properties, that is, the canal and generating station and transmission line, I have \$16,900.00. Depreciation and reserve I've estimated should be an annual—should take an annual charge of \$17,853.00, making a total of \$34,753.00, of which 16.7 per cent is chargeable to irrigation, amounting to \$5803.00, leaving the proportion chargeable to the commercial power \$28,950.00. [842]

Q. And is that ordinarily done, to charge part of the cost of operation to pumping power and part to commercial power, as you have done here?

A. In this kind of a case, yes.

Mr. Powell: Since counsel, if your Honor please, examined this witness concerning operations subsequent to 1943, we would like to introduce identification 19.

Mr. Ramsey: Same objection, if the Court please. Counsel can't depend on the cross-examination for the purpose of getting in his exhibits in his case in chief.

The Court: I'll sustain the objection to the exhibit.

Mr. Powell: Exception, your Honor.

The Court: Exception allowed, yes.

Mr. Powell: I would like to offer, if your Honor please, a certified copy of a state map, certified by the State Highway Department, certified in 1943, to show the general location of the area as it relates to the State of Washington and the surrounding areas.

(Testimony of Barry Dibble.)

The Court: Has that been marked as an identification?

Mr. Powell: It has not, yet. I think counsel has seen it. The purpose, if I might state to your Honor, is to show the location of White Bluffs and the property involved here. [843]

The Court: Is that a map of the entire State of Washington?

Mr. Powell: Yes, your Honor.

The Court: Showing the location of the properties?

Mr. Powell: It doesn't show the location of the properties, but merely White Bluffs, and Hanford, the Horn, and the Allard station described by Mr. Salvini.

(Whereupon, the map of the State of Washington was marked Defendant's Exhibit No. 20 for identification.)

Mr. Powell: We offer the map in evidence.

Mr. Ramsey: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled. It will be admitted for the purpose of illustration.

(Whereupon, Defendant's Exhibit No. 20 for identification was admitted in evidence.)

Redirect Examination

(Continued.)

Q. Now, you have been asked on cross-examination, Mr. Dibble, as to whether or not the Bonne-

(Testimony of Barry Dibble.)

ville would be interested in taking this power at the same price at which they were selling it. What is the fact as to whether this power that was available at this plant on October 1, 1943 was the same kind of power that Bonneville was selling as dump power? A. No, it was not. [844]

Q. Why?

A. It was definitely available throughout the season, throughout the year.

Q. And what about the Bonneville 2½ mill power?

A. That was occasional power, withdrawable at any time.

Q. Now, referring to the examination of counsel in reference to the uses of the pumping station, do we have down in the lower left hand corner of exhibit 18 any indication as to the power output?

A. Yes.

Q. There are six high points on your graph, exhibit 18. When do they come with reference to the irrigation season?

A. They come during the irrigation season.

Q. During the irrigation season? A. Yes.

Q. And the Coyote pump power, then, is taken off of the top of those productions, is that right?

A. That is correct.

Q. One of the questions asked you in reference to exhibit 16, or exhibit 14, I believe, was the matter of station uses. Would you mind explaining, Mr. Dibble, what is meant by station uses?

(Testimony of Barry Dibble.)

A. The heading there on exhibit 14 to which I think you refer is district use. [845]

Q. District use.

A. On the log sheets it is called station use, and it is the electricity that is used in the station for station purposes, pumps and lights and perhaps an electric heater and all the various things that are needed in the station, and for the operators' houses, and other purposes directly related to the operation of the generating station.

Q. Have you made allowance for that in your computations? A. I have.

Q. Is that necessary, that that power at all times, or that some power, be used at the plant?

A. Yes.

Q. And have you made allowance for that?

A. I have.

Q. Now, what about this matter of building transmission lines to the place of generation of power? Is that done? A. Yes.

Q. By wholesale customers?

A. Yes, frequently.

Q. You have taken into consideration, have you, in arriving at your possible sale price of this power, a possibility of various customers? A. Yes.

Q. And this contract that was referred to had another element in it of stand-by power, didn't it?

A. Yes. [846]

Q. What is meant by that?

A. That is power which the Pacific Power and Light Company undertakes to supply to the District in case the District needs it.

(Testimony of Barry Dibble.)

Q. And do you remember the amount of that?

A. The price of that is 4 mills per kilowatt hour.

Q. Is that high, or low, for stand-by power?

A. That is rather low.

Mr. Powell: I think that's all.

Recross-Examination

By Mr. Ramsey:

Q. Your firm power would be no greater than your low production rate, would it?

A. The low production that can be maintained.

Q. Yes. Now, turning to exhibit number 14, for power data for the year 1942, I notice your low month is December, in which you produced 487,400 kilowatt hours. In May you produced 1,712,800 kilowatt hours, or about four times as much power as was produced in December. Your firm power would not be determined by the power amount produced during the year, but by the low, wouldn't it?

A. I didn't understand the last part of the question.

Q. I say, your firm power would be determined, not by your peak production as shown here, in May, or in June, or July, or August, but by your low production? [847]

A. By the low potential production, not by the actual production here.

Q. In other words, under your firm power contract, you must be prepared to deliver the amount covered by that contract, at any time and all times?

A. Not at any time. Any time the customer

(Testimony of Barry Dibble.)

wants it, and frequently the customer demand is of such character that it isn't continuous; usually it isn't continuous.

Q. So actually your firm power sales would be limited to the level of your low production?

A. The low potential production.

Q. By that I presume you mean if you could find some way of producing at the low point every year 800,000 kilowatt hours, that would be your low production, wouldn't it? A. Yes.

Q. However, if you were only able to produce 487,000 kilowatt hours, that would be your low production, wouldn't it?

A. That is production in kilowatt hours, not in firm power.

Q. Well, if you were face to face with this situation, that you have this power generated as shown during the year 1942, what would be your firm power production that you would be in a position to market?

A. There isn't enough information there to determine that.

Q. You're not taking this, then, as an average year?

A. You can't divide those kilowatt hour [848] quantities by any figure to determine firm power.

Q. Well, you certainly couldn't, wouldn't be in a position to market 8,743,000 kilowatt hours of firm power in that year, would you?

A. I don't—

(Testimony of Barry Dibble.)

Q. That is the last line, the production less what was used by the District and the pumping plants. That wouldn't all be firm power, would it?

A. This is energy that is listed here, not power at all, and this isn't all firm energy. That is a difficult thing to define.

Q. Well, what do you mean by the term "firm power"?

A. "Firm power" is properly the power that is available at the time the customer wants it.

Q. At all times the customer wants it?

A. Not at all times, necessarily, but at the time that the customer wants it.

Q. Well, just what does that mean? If you must stand by ready to deliver a certain amount of power at any time the customer wants it, wouldn't that require you to deliver it any time the customer wants it?

A. Well, normal electric load is quite cyclic in character and varies from hour to hour during the day, and the firm power needs to be available at the peak time of requirements. Power is kilowatts, and kilowatt hours don't define it. [849]

Q. Well, frankly, Mr. Dibble, my knowledge of electricity is so limited and the field is so broad that I haven't any hope that you can educate me on this thing during this particular trial, and perhaps some of the jurors are in the same boat. I am trying to get this thing in common lay language. You develop a certain amount of power, but that varies from time to time, doesn't it?

A. Yes.

(Testimony of Barry Dibble.)

Q. Now, your firm power sales is that production of energy that can be counted upon at any time, am I correct, or at all times?

A. No, it is not necessarily available at all times. In this case, to put the matter in figures, I have taken 1100 kilowatts that can be made available when the customer wants it.

Q. And when you say when a customer wants it, do you mean any time the customer may demand it, or ask for it, or need it? A. Yes.

Q. And your peak production is not that kind of power, is it?

A. The peak production of kilowatt hours?

Q. Yes. A. No, not all of it.

Q. So when you go to market this power that you have you're [850] not going to market all of it as firm power; part of it is going out as dump power, isn't it? A. Yes.

Q. And a considerable percentage of it?

A. Yes, that is in the $2\frac{1}{2}$ mill item for energy; it is only 1100 kilowatts from a power standpoint.

Q. In other words, your $2\frac{1}{2}$ mills does not comprehend a price only on firm power, but it is a price that you're fixing for both firm and dump power?

A. I'm fixing that on energy, not on power at all. You're distinguishing between kilowatts and kilowatt hours. The kilowatts are the energy, and I put that all in as $2\frac{1}{2}$ mills. Some of that may be dump energy, and some of it may be firm energy.

Q. That's what I've been trying to get at. Now, you say that it frequently happens that the con-

(Testimony of Barry Dibble.)

sumer builds a line into the plant producing the power. Do you know of instances of that sort in the State of Washington?

A. If you change the word "consumer" to "customer" I think it would be more appropriate.

Q. All right, let's use the word "customer".

Mr. Powell: Do you want to fix a time, Mr. Ramsey?

Mr. Ramsey: Oh, I don't care, in the history of the state.

Mr. Powell: You mean up to date? [851]

Mr. Ramsey: Up to date.

A. Well, I'm not particularly familiar with the conditions right in the State of Washington, but I do know of several instances 'round about.

Q. Usually that occurs where a company builds a power plant primarily for the purpose of using it for its own business and has an excess, and someone else needs some power in their business, and they build in there to get that excess, now isn't that true?

A. That is frequently the condition.

Q. Do you know of any company that is in the business of producing electric power for sale for general consumption, making that their business, where the consumer builds lines into their plant to get power?

A. Yes, on this case on the Flathead project, the Indian Service, needing the power, builds to the Montana Power plant at Kerr Dam.

(Testimony of Barry Dibble.)

Q. Well, what was the primary purpose of putting in that dam there?

A. To develop power.

Q. Used in any way for irrigation? A. No.

Q. Now, what is the primary use of the power there developed?

A. Oh, all kinds of uses; Montana Power Company develops it as part of its system. [852]

Q. Did the Montana Power Company build this plant there? A. Yes.

Q. Now, who builds in there to get their power?

A. Well, in this instance the Office of Indian Affairs, in connection with the Flathead Project.

Q. In other words, it was a case where the Office of Indian Affairs desired a large amount of power for a particular purpose?

A. Some for pumping, and some for sale.

Q. And they take the power there, and then sell it? A. And use it themselves.

Q. And use——

A. Use it for pumping.

Q. That isn't a case of the ultimate consumer taking it, but of a branch of the government taking it for distribution on its own lines, isn't that the case?

A. Well, the branch of the government is the customer in that case, it is not the ultimate customer. The R.E.A. might be in the same shape. It builds the line as a power distributing concern, and buys the power and distributes it.

(Testimony of Barry Dibble.)

Q. Now, in a case of that character the seller of electrical power would have to present a pretty advantageous contract to the consumer to justify him in going to the expense of building a very expensive line in to get the power, [853] wouldn't he?

A. Well, the dollars are of course the thing that count.

Q. So long as that power was available from another source at or near the price that they would be forced to pay at the plant, there wouldn't be any purpose in any consumer building in there, would there?

A. Well, unless there were other advantages.

Q. Yes. In the main, all of the power companies who are engaged in developing and selling power expect to build lines and sell that power not at the plant, but over the entire area, don't they?

A. That is generally true, but as I understood it, the building of a distribution system in this case was ruled out as speculative, and so I figured this on the basis of delivery at the plant, or on that piece of transmission line.

Q. Yes. Now, if delivery of power is made as it has been made in the past by the Priest Rapids District over this 12 or 16 miles of transmission line, wouldn't there be a line loss between the plant and the place where that power was metered out to the consumer, which in this case, was the P. P. & L. Company?

A. Well, it would be a very small line loss.

(Testimony of Barry Dibble.)

Q. Well, usually don't those contracts specify a certain line loss? [854]

A. Sometimes they do and sometimes they don't; it depends on the contract.

Q. Have you seen the contract? A. Yes.

Q. That contract did provide for a deduction for line loss, didn't it?

A. Yes, a rather large one. Might I add that the loss that is specified there is probably much larger than the actual loss.

Q. Well, do you know that, or do you believe it?

A. I believe it; well, in fact, I know it.

Q. Have you made any check to determine the amount of line loss on that line?

A. Yes, I made some computation.

Q. I didn't understand you. A. Yes.

Q. And what did you find to be the actual line loss on that 16 miles of line?

A. Well, it can't very well amount to more than 2 or 2½ per cent.

Q. The longer the line the greater would be the loss, usually, wouldn't it?

A. Well, the loss in the line itself is very small; most of the loss is in the transformers. Yes, the losses do increase with the length of the line, but in a line this [855] length they're very small.

Q. Now, in figuring your gross income from the sale of what you assumed would be the electrical power up there for sale, did you allow anything for line loss, or did you assume you were going to sell that at the plant and there would be no line loss?

(Testimony of Barry Dibble.)

A. Well, I made an allowance for power that is unsalable, and that potential energy that is unsalable and the losses are included in that item.

Mr. Ramsey: I think that's all.

Redirect Examination

By Mr. Powell:

Q. Referring to private or public agencies that may have built to the source of power, Mr. Dibble, are you familiar with the conditions at Boulder?

A. Yes.

Q. Who built to the source of power there?

A. Well, a great many agencies have built there, the City of Los Angeles, the Southern California Edison Company, the California Electric Power Company, the State of Nevada, an irrigation district, and some other agencies.

Q. And what about the Yuma Project?

A. On the Yuma Project the power company has built to the power plant, or near the plant; I'm not sure whether they go right to the plant or not.

Q. And in the State of Washington, what [856] about the present plant as now operated by the power company, haven't they built a line into this plant?

A. Yes, at least to Coyote Junction.

Q. Referring to the present connection, Mr. Dibble, outside of the project.

A. Oh, there is also the Beverly line at Priest Rapids, where the power company comes right into the plant to get the power.

(Testimony of Barry Dibble.)

Q. Isn't there a power company line across the hill from Midway that connects with this line?

A. Oh. yes; of course, the power company line had to get out of there and connect with the rest of its system.

Q. Now, I believe that you referred to the rate that you had computed this power on as being a rate that was comparable to the Bonneville rate?

A. It is similar to one of the Bonneville rates.

Q. And what is that rate?

A. It is 75 cents per kilowatt per month, plus 2½ mills a kilowatt hour.

Q. Is that the same rate that you've used here?

A. It is.

Q. How much power have you used as firm power?

A. I've used 1100 kilowatts as the firm power.

Q. 1100 kilowatts of firm power? A. Yes.

Q. The rest of it is [857]—would it be dump energy? A. Yes.

Mr. Powell: I think that's all.

Recross-Examination

By Mr. Ramsey:

Q. This Bonneville rate that you refer to is only for irrigation purposes, isn't it?

A. No, it is a general rate.

Q. Now, this line which was built in by the P. P. & L. to connect with this line, isn't that the direct P. P. & L. line from Yakima to Pasco that passes by there? A. I don't know.

(Testimony of Barry Dibble.)

Q. Well, it continues on from there, don't it in both directions?

A. There are two ends to it, anyway.

Q. Yes. Now, the line at Midway is the Bonneville Power Administration line that runs right through that area, isn't it?

A. Yes.

Q. There wasn't any line built in there to connect up with the Priest Rapids Irrigation District power line, and neither was the P. P. & L. line either, was it?

A. I'm not familiar with the history of that line.
Mr. Ramsey: That's all.

The Court: Any more questions?

Mr. Powell: That's all. [858]

(Whereupon, there being no further questions, the witness was excused.)

Mr. Powell: The defendants rest, your Honor.

Mr. Ramsey: It is now four o'clock, if the Court please, and I believe that the government can put on its case in a part of the day tomorrow. I don't think it will require the entire day to put it on.

The Court: Well, we'll adjourn, if you prefer, then, until tomorrow.

Mr. Ramsey: I would like to ask that, if the Court please.

Mr. Powell: May I ask whether counsel wants any of these matters to make tabulations?

Mr. Ramsey: No; I have requested that the witness Salvini or Reiersen bring in the original

(Testimony of Barry Dibble.)

contract with the Priest Rapids Development Company.

The Court: I think these books and records should be left here where they are available to both sides. They have been the basis of some of the testimony here.

(Whereupon, the Court took a recess in this cause until Tuesday, February 18, 1947, at 10 o'clock a.m.)

Yakima, Washington, February 18, 1947

10 o'Clock A. M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Ramsey: The petitioner, the United States of America, at this time moves the Court to direct the jury to return a verdict herein in a nominal sum, upon the ground and for the reason that the only thing taken under declaration of taking number 99 from the District was the naked legal title to the properties and facilities of the District, and the value of that naked legal title, not coupled with any beneficial interest, could only be a nominal sum.

The Court: The motion will be denied. Exception allowed. Anything else before we bring the jury in?

Mr. Powell: We have one additional instruction.

The Court: All right.

Mr. Cheadle: This is the one additional instruction, your Honor, in addition to the nine we filed last night, and I'll have this extra set as soon as I've signed it. [862]

The Court: All right, I think we're ready now. Bring in the jury.

Mr. Powell: May the record show that we have filed our proposed instructions?

The Court: Yes.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

B. SALVINI

recalled as a witness on behalf of the Petitioner, testified as follows:

Direct Examination

By Mr. Ramsey:

Q. Where did you reside, Mr. Salvini, prior to the time that the government took over the territory now embraced in the Hanford Engineering Works Project?

A. I didn't get that question.

Q. I say, where did you reside prior to the time that the government took over the territory that is now embraced in the Hanford Engineering Works Project?

A. Where I reside before they took it over?

(Testimony of B. Salvini.)

Q. Yes. A. At Hanford.

Q. How long had you resided in that vicinity?

A. Since 1917, I think it is.

Q. And during that whole period from 1917 until 1943 you were a resident of the Priest Rapids Irrigation District? [863]

A. Yes.

Q. You owned lands within the District?

A. Yes.

Q. What, if any, official position did you hold with the Priest Rapids Irrigation District?

A. I was on the Board of Directors, and I was chairman.

Q. For how long a period were you a director or the chairman of the Board of Directors in the District?

A. Well, I don't know just what date it was, but since—I think it is since they started the District to operate.

Q. That would be about 1931 or '32?

A. Well, the receiver had something to do, I think, at that time, and we operated in conjunction with the receiver, I think; I forget just what the arrangement was at that time.

Q. Well, now, back in 1917 when you first went into the area the lands in what is now known as the Priests Rapids Irrigation District were irrigated from what means, and from what source?

A. The same source that it was in there now.

Q. Who operated what is now the District facilities?

A. Well, at that time there was three companies, I think it was.

(Testimony of B. Salvini.)

Q. Yes. Were those municipal or semi-municipal corporations, or were they private companies? [864]

A. They were private companies.

Q. And were those three companies the Agathon Land Company, the Consumers' Ditch Company, and the Black Rock Power and Irrigation Company?

A. Yes.

Q. And the power plant and transmission lines were operated by the Black Rock Power and Irrigation Company, is that correct? A. Yes.

Q. The pumping plant was operated by which company?

A. By the Consumers' Ditch Company.

Q. And the ditches themselves, the canals, were operated by the Consumers' Ditch Company?

A. The same company.

Q. The land was being sold by the Agathon Land Company, is that correct? A. Yes.

Q. Now, what happened to these companies prior to the time that the District took over the facilities?

Mr. Powell: If your Honor please, I don't know the purpose of these questions, but if it is the purpose of showing the purchase price of the property, I will object as too remote, over ten or eleven years before the property was taken.

The Court: Well, we haven't got to that yet. I [865] think the general history is pertinent here, to show the background of this project. Go ahead with the examination.

(Testimony of B. Salvini.)

A. Well, before I went on that District there was litigation, and this company here was already split when I was up there, in three companies.

Q. Yes.

A. And right in the spring, I guess, 1918 or '19, they started a case, the Adamson and Black Rock Power. The purpose of that, the company, they tried to sell the power over from the land, and they litigated until I don't know just when the decision come out, but it was over ten years after, or so, and being the people they was successful, then they went and had the receiver.

Q. The three companies, and particularly the Black Rock Power and Irrigation Company, went into the hands of a receiver?

A. They went into the hands of the receiver, when they see they couldn't separate the property from that land, so the District just about that time it was alive then; there wasn't anybody else that could take that property, because they couldn't operate it.

Q. And the District itself purchased the property of the Black Rock Power and Irrigation Company?

A. We didn't purchase it; we just took it over from the [866] receiver.

Q. Well, didn't you pay something for it?

A. We just paid the receiver's costs.

Q. Yes. By receiver's costs you mean the upset price set by the Court?

A. The price that the Court set on the receiver's expenses.

(Testimony of B. Salvini.)

Q. Exactly; the price fixed by the Court. Now, prior to the Black Rock Power and Irrigation Company and the other companies taking over there, this whole set-up had been handled by the Hanford Power and Irrigation Company, hadn't it?

A. Well, that was the original company.

Q. They built the plant?

A. Built that stuff.

Q. And built the pumping plant?

A. And finally when that company had to finance that thing, well they sold a lot of stock; the American Power and Light got all that stock, and that's where the trouble started, until 1928 or 1929 when the people knew they couldn't take possession of the power plant, so the District, they organized the District, and took it over.

Q. Well, let's get back to the first step first. The power plant was built by the Hanford Power and Irrigation Company?

A. Yes. [867]

Q. The transmission lines were put in by that company?

A. Well, the transmission line, part was built by the Hanford Power and Irrigation Company, but at the time they were forced to sell a lot of stock to the eastern capital——

Q. Well, never mind that; let's keep on with the history.

A. Well, that's what happened.

Q. Now, the power plant was built by the Hanford Power and Irrigation Company?

A. Yes.

(Testimony of B. Salvini.)

Q. The transmission line, at least in part, was built by the company, is that correct?

A. Well, there was a change during the trial and litigation; I couldn't tell you just what, here, but part of those lines that was built now, the line that was coming to Yakima from Priest Rapids, that was built just about the time that they had to sell a lot of bonds.

Q. Built by whom?

A. The Pacific Power was in the field already at that time.

Q. Well, who built the line?

A. Well, it was the Black Rock Power, just before the splitting of the Black Rock Power and the Consumers' Ditch Company, so that naturally was in the name of the Hanford Power and Irrigation Company.

Q. Now, who built the pumping plant? [868]

A. Well, the same company.

Q. The Black Rock, or the Hanford?

A. The Hanford Power and Irrigation district.

Q. Who constructed the ditch system and the canal system? A. The same company.

Q. The Hanford Power and Irrigation Company? A. The same company.

Q. Now, what happened? How did the ownership of these companies change from the Hanford Power and Irrigation Company to the Black Rock power and irrigation company, and the Consumers' Ditch Company, and the Agathon Land Company?

A. Well, that's just the time that I didn't was there, but I just hear, because there was quite a talk

(Testimony of B. Salvini.)

about what happened before I was there, when the Hanford Power and Irrigation Company was forced into receivership.

Q. And the Black Rock and the Consumers' Ditch Company and the Agathon Land Company took over the assets?

A. No, whoever took over was a fellow by the name Lyon and Pierce, and those was connected with the American Power and Light, and then they split the company, and they say that the Black Rock was independent, they owned the Black Rock, and they told the people they could take the canal.

Q. Let's don't go into what they contended, Mr. Salvini. I am just trying to get the historical background at the [869] present time. I understand there was a lot of contentions taken up to the courts in the various litigation. Following the receivership of the Hanford Power and Irrigation Company these individuals purchased the properties, is that correct? A. Yes.

Q. And then formed the three companies that we have spoken of, the Consumer' Ditch Company, the Black Rock Power and Irrigation Company, and the Agathon Land Company? A. Yes.

Q. And then subsequently these companies went into the hands of the receiver?

A. They went into the hands of the receiver because they was forced——

Q. Let's don't attempt to explain the reasons for the receivership. The fact remains they went into the hands of the receiver, didn't they?

A. They quit.

(Testimony of B. Salvini.)

Q. Well, they were in the hands of the receiver?

A. Yes.

Q. And the Irrigation District purchased these properties from the receiver? A. Yes.

Q. Now, don't answer this question until counsel has had an opportunity to object. What was the price paid by the [870] Priest Rapids Irrigation District for the power plant, together with the canal that serves it with water, the transmission lines, the pumping plant, and the ditch, rather, the ditches, and canal systems and laterals now operating in the District?

Mr. Powell: May we have the date of that, approximate date?

Q. About 1931 or '32?

A. Something like that.

Q. Just a minute, let counsel make his objection.

Mr. Powell: Thank you. We object, if your Honor please, as being too remote in order to furnish evidence of any value at the time of taking in October or April, 1943, and if the Court does permit it, the jury should be instructed it is only received as historical evidence.

Mr. Ramsey: I submit to the Court that each and every one of the witnesses called on the stand have stated in their opinion the historical and financial record of these properties are of importance in determining the present value, or the value in 1943, of those properties, and I am attempting to place before the jury the historical and financial record of the properties up to the time the government took over.

(Testimony of B. Salvini.)

The Court: I think I'll have the jury step out just a moment. We might as well settle this before we [871] go on.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Powell: Another ground to my objection may be, if your Honor please, that this was a distress sale and not a sale between individuals dealing as an ordinary purchaser and seller.

The Court: Well, I think as evidence of sale a receiver's sale wouldn't be a voluntary sale. The price at which an owner acquired the property—correct me if I'm wrong—may or may not be admissible, depending on the lapse of time. Is that the rule, as too remote?

Mr. Ramsey: Generally speaking, your Honor, that is the rule, if applied to properties where the test is the fair market value as determined by comparable sales. We're dealing with properties where we can't apply that rule. We must use every other approach that can be used, and Heaven knows we've used it in this proceeding. Now we're getting into the matter of the direct purchase of this particular property, and granting that it is remote in point of time, nevertheless since we can't deal on a fair market value as established by the sale of comparable properties, where the rule is cinched down "within a reasonable time" as reflecting fair market values, then [872] we must revert to something dif-

(Testimony of B. Salvini.)

ferent again, and this is one approach that I think is proper and right, to give it whatever value it may have in the proceeding, and each of these witnesses have testified "ordinarily, yes, in a case of this sort very great attention would be paid to the financial history of the particular property; we're working on it now as income property, reproduction cost less depreciation, reproduction cost without depreciation, reproduction cost not on the particular plants themselves, but on a hypothetical plant" that the witness believed would be comparable for production of that amount of power, and what the average cost would be. Certainly this is as closely tied in to the ultimate result as any of the approaches used to the present time.

The Court: Historical book cost could have been used, I think, if it was available. This is a little different, however, from historical book cost.

Mr. Ramsey: I will say again that this in part is merely preliminary. I expect to follow the financial history of this matter from the time it was acquired by the District. That can be shown by showing what the bonded indebtedness was for the purpose of purchasing this power site and all the facilities, and then show whether that indebtedness increased or decreased thereafter while they were operating the particular properties [873]

The Court: I think I can hear from the other side.

Mr. Cheadle: First, your Honor, again the leading case of *Olson vs. United States*, Supreme Court

(Testimony of B. Salvini.)

of the United States in 1933. This case has been followed in case after case of the Circuit Courts of Appeal, and cited with approval by the Supreme Court of the United States.

The Court: What is the citation of that again?

Mr. Cheadle: 292 U. S. 246, and I'm reading from page 255:

“That equivalent is the market value of the property at the time of taking, contemporaneously paid in money. It may be more or less than the owner's investment. He may have acquired the property for less than it is worth, or he may have paid a speculative and exorbitant price. Its value may have changed substantially while held by him. The return yielded may have been greater or less than interest, taxes, and other carrying charges. The public may not by any means confiscate the benefits or be required to bear the burden of the owner's bargain. He is entitled to be put in as good a position pecuniarily as if his property had not been taken. He must be made whole, but is not entitled to more. It is the [874] property, and not the cost of it, that is safeguarded by state and Federal constitutions.”

We submit, therefore, that what is guaranteed by the Federal constitution to be paid in just compensation in this case, in this trial, is the market value of that property in 1943, and not the cost of it to the Priest Rapids Irrigation District company in 1932 or whatever that date in the early thirties was.

(Testimony of B. Salvini.)

The Court: 1931, I think, wasn't it?

Mr. Cheadle: 1931. We submit that that is so remote that the question of what they paid at that time is a question which is inadmissible under the clear statement of the Supreme Court of the United States in the Olson case. Moreover, and with regard to the point that Mr. Powell made that this was a distress sale, and it was rather unlike most receiver's sales, your Honor, in *Blakely vs. Priest Rapids Irrigation District*, 168 Wash. 267, and I read from page 282, on which page the Supreme Court of this state quoted from the decree of sale entered by this District Court:

"The receivership in this cause has been prolonged far beyond the time anticipated when the court appointed such receiver at the initiation of this litigation. Such receivership has only thus been continued for the purpose of enabling [875] the parties in interest to effect some form of financial re-organization that would assure at receivership sale a purchaser able and willing to carry on and perform the various obligations involved in the conduct of such irrigation enterprise. The various efforts heretofore made by parties in interest to perfect such reorganization and/or to procure a purchaser of the assets at receiver's sale have been so far fruitless. This court has become convinced that it is not practicable or feasible to continue indefinitely the operation of these

(Testimony of B. Salvini.)

receiver is necessarily without funds or credit with which to make essential repairs and replacements on the property involved in said receivership. It is apparent to this court that although the receiver has performed his duties with the utmost faithfulness and competency, a continuance of the receivership beyond the present time will work seriously to the detriment of the irrigation enterprise whose facilities are involved in this litigation."

I do not want to read at too great length from that, your Honor. The Court goes on and concludes that it shall be put up for sale with the upset price merely the amount of indebtedness which the receiver himself had incurred in the operation of the properties during the receivership, [876] for which indebtedness he had issued receiver's certificates, and we submit that that was clearly a distress sale, and that for that additional reason this evidence should not be admitted and go before the jury, and certainly that if over our objection it were admitted, at the time when it comes in we respectfully submit the Court should instruct the jury, and certainly if it does come in it is entitled to the littlest of weight, and we submit that under the Olson case it is not entitled to any weight at all, because this District is entitled to the value of its property in 1943, and it is entirely irrelevant as to what the owner paid for the property, certainly, when he bought it in 1932.

(Testimony of B. Salvini.)

Mr. Ramsey: I submit this is not an ordinary distress sale at all. Had counsel not quoted from the particular case I should have done so myself. Here was a situation where for years and years this receivership was continued for the purpose of enabling them to find a purchaser for this property. This wasn't a case of where the sheriff goes out and puts up property for sale and right there and then knocks it down to the highest bidder. On the other hand, the Court continued the receivership over a long period of years, and during that entire time any person could have purchased the property, and every effort was being made by the receiver and every other party involved to find a purchaser of the property, so it in no sense of [877] the word was a distress sale. The property was for sale, but it wasn't shoved up for sale to the highest bidder at a specific moment and without adequate time in which to canvas the possible purchasers. It was held in receivership for year after year after year to enable the receiver and the owners of the property to find a purchaser. It was anything but a distress sale, and anything but the ordinary type of a forced sale. There isn't the slightest relationship. Now, so far as counsel's other quotation is concerned, certainly what we're attempting to find in this proceeding is the fair market value, and certainly I'm not urging on the court that this is the sole measure of the fair market value, any more than any of the other approaches that have been used represents the fair market value. Boiled down the fair market value

(Testimony of B. Salvini.)

must be determined from the results obtained by all the approaches used, and I submit to the Court that certainly the financial history of this particular property, the prices paid, the results obtained in the operation of the property, are matters that properly should go to the jury in their attempt to determine what represents the fair market value of this particular property.

The Court: I think it is conceded by everyone that the measure of value in this case as stated in *Olson vs. United States* is the fair cash market value at the [878] time of the taking, but in the case of electrical power properties, properties of the kind involved in this action, there isn't an actual market for them. You can't prove the value more directly by comparable sales. It is permissible to show various other things, such as income, reproduction cost new, reproduction cost new less depreciation, and historical book cost, things that do not show directly, any of them, the cash market value, but may be taken into consideration by the jury as bearing indirectly upon that value, so that I think here you could go into the past history of this project if you showed historical book cost, but this matter is different from that, and it just seems to me we must draw the line somewhere here, and it would seem to me that permitting evidence to go to the jury of the price paid for this company at a receiver's sale in 1931, which I think the court can take judicial notice was almost the bottom of the depression, when the measure of value, the ultimate measure, is the

(Testimony of B. Salvini.)

year of 1943, which was referred to as a lush war year, and the objection will be sustained. However, I might state that he can go into the financial history of the operation under the defendant irrigation district to show any pertinent matters as to whether or not the operation was profitable or otherwise. If there is any objection to that I might as well hear it now, because it seems to me that since it has been contended [879] this property has a very substantial value because it can be operated profitably by production of power for commercial sale, that what has happened to them in the past would be pertinent and bearing on whether it was profitable or not.

Mr. Powell: In order to speed things up, may I ask the Court, then, if counsel will be permitted to show the operation of the property in its condition in prior years, because the condition was changed in 1941, the new generator was put in, it was a different plant, half different, anyway.

The Court: Well, I think he can show the operation under this District, and then the matter of changes throughout the years or anything that would have a bearing on it would be a matter of cross-examination or rebuttal.

Mr. Powell: Then is there any information we can furnish counsel to help speed it up?

The Court: He'll probably ask more than he needs. The government is allowed an exception. Bring in the jury.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

(Testimony of B. Salvini.)

Direct Examination

(Continued)

By Mr. Ramsey:

Q. Now, Mr. Salvini, what was the bonded indebtedness of the Priest Rapids Irrigation District Immediately after they [880] acquired the properties that have been described here?

A. Well, right at that date, well, I couldn't tell you—if I had the financial statement with me, but I know that whatever we settled with the government, we was left with \$165,000.00 in bonds.

Q. No, I'm talking now of what the bonded indebtedness was immediately after they acquired the power plant, transmission line, pumping plant, and ditches.

A. Well, it was—we were just reorganized, bonds in 1941, I think it was——

Q. No, Mr. Salvini, I'm not interested in 1941. I'm talking now——

The Court: I think if the reporter reads it.

(Whereupon, the reporter read the question, as follows: "Question: No, I'm talking now of what the bonded indebtedness was immediately after they acquired the power plant, transmission line, pumping plant, and ditches".)

A. That was in 1943?

Q. No, Mr. Salvini, I mean back in 1931 or '32.

A. Oh, that time. I'm pretty sure that the District float \$120,000.00.

Q. Were all the bonds sold?

(Testimony of B. Salvini.)

Mr. Cheadle: If the Court please, just so that the record will be straight, we're agreeable to stipulating [881] as is shown in this Blakely vs. Priest Rapids case the bond issue at the time counsel inquires about was \$125,000.00.

The Court: Is that agreeable, that stipulation?

Mr. Ramsey: That is acceptable, if the Court please.

The Court: All right, the record will show, then, that the bonded indebtedness at that time was \$125,000.00.

Direct Examination

(continued)

Q. Now, was all of that \$125,000.00 worth of bonds sold at that time, Mr. Salvini?

A. Must not. I'm not familiar any more. I don't think it was all sold at that time.

Q. Do you know what the total was of the bonds that were sold and were outstanding at that time?

A. No, I don't.

Q. But it was less than the \$125,000.00 bond issue?

A. I think they used all that money, because there was a lot of work to do at that time on the canals and laterals. It was all broke, and I think they used all that money.

Q. That is, in the repair of the facilities, and so on? A. The repair of the facilities.

Q. Now, from that date, from 1931 or '32, when the District took over these facilities, they operated those facilities continuously down to the time that

(Testimony of B. Salvini.)

the government took [882] over the properties, didn't they? A. Yes.

Q. And what was the bonded indebtedness of the Priest Rapids Irrigation District on the date that the government took over the area out there?

Mr. Powell: If your Honor please, we have a copy of the financial statement of February 28, 1943. Will that help counsel?

The Court: Perhaps you can get what you want from that, and stipulate to it.

Direct Examination

(Continued)

Q. I'll show you, Mr. Salvini, a financial statement which counsel for the District states represents the financial condition of the District on February 12, is it, 1943?

Mr. Powell: February 28.

Q. February 28, 1943.

The Court: '43 did you say?

A. Yes. Now, from this financial statement, if you have no independent recollection, what is shown to be the bonded indebtedness of the District outstanding? A. \$173,000.00.

Q. \$173,000.00. A. Uh huh.

Q. And what is shown to be the warrant indebtedness of the District outstanding? [883]

A. \$10,636.31.

Q. That is the maintenance fund warrant account. What about the construction fund warrant account? As a matter of fact, Mr. Salvini, the

(Testimony of B. Salvini.)

total warrant indebtedness of the District at that time was the sum of \$16,421.09, wasn't it?

A. Yeh.

Mr. Powell: To save time, maybe we can agree that this can go in evidence; the jury can balance it.

Mr. Ramsey: That is satisfactory to me.

The Court: That's all right, but how can the jury figure it out if you can't?

Direct Examination

(Continued)

Q. Well, now, Mr. Salvini, under construction fund warrant account this statement shows \$4,143.74 of warrants outstanding at the beginning of the month of February, doesn't it?

A. Well, I wouldn't tell you until I understand this thing here, because I tell you the reason for it.

Q. Well, read it.

A. Just in six months, this statement here should show the money that we pay out, a lot of bonds and interest on those bonds, before they were due, and everything, and we had that money, so until I get this thing here in my head—— [884]

The Court: Can't you stipulate as to what the current indebtedness was?

Mr. Ramsey: Counsel has stated that he will stipulate that as of the first of the month of February, 1943, there was \$4,143.74 worth of warrants outstanding in the construction fund warrant account, and \$10,636.31 worth of maintenance fund warrants outstanding, as of the first of February, 1943; correct?

(Testimony of B. Salvini.)

Mr. Powell: The last of February, 1943; February 28th.

Mr. Ramsey: Well, these read "warrants outstanding at the beginning of the month".

Mr. Powell: Well, it says the end of the month, too, as to both.

Mr. Ramsey: Well, as of the end of February, 1943.

The Court: Is that acceptable?

Mr. Powell: Yes, your Honor.

The Court: All right, the jury may take that as evidence, then.

Direct Examination

(Continued)

Q. So, Mr. Salvini, during the period that the Priest Rapids Irrigation District was operating these properties the actual bonded and warrant indebtedness outstanding had increased about \$75,000.00—no, about \$60,000.00, hadn't [885] it?

A. Yes.

Q. Now, this increase in bonded indebtedness, could it have been accounted for by the fact that the District had to replace a generator, or a generating unit, in the power plant, and do certain work on the canal up there?

A. Part.

Q. That partly explains it. Do you know how much money was spent on the canal by the District, the power canal?

A. No, I never knew the——

(Testimony of B. Salvini.)

Q. You don't know the exact amount?

A. —the exact amount.

Q. Now, you say at the time that the District took over the ditches they were not in good condition? A. No.

Q. And it was necessary to spend money on the repair of the canals and ditches. What was the condition of those ditches at the time that the government took them over?

A. They were in good shape to serve the land that we had the facilities. We had some new pipe line, just put in in 1940, 48 inch pipe line, down at Hanford, was brand new.

Q. And how much was there of that?

A. Huh?

Q. How much of that pipe line was there that you put in in [886] 1940?

A. Well, we put in the whole line with that, the lateral that was serving the Hanford area.

Q. Yes, but how much was there of it?

A. There was a mile of it.

Q. About a mile? A. About a mile.

Q. And what made it necessary to put in that mile of pipe line?

A. Well, it was out of repair, the other pipe line.

Q. It was impossible to utilize the old pipe line any further, so you had to replace it?

A. Yes.

Q. Well, that normally happened, didn't it? You always had to replace pipe lines if they went to pieces? A. Not every year.

(Testimony of B. Salvini.)

Q. Oh, no; I say as they depreciated and were no longer fit for use, you had to replace them; you expected to do that when you put in a pipe line, didn't you?

A. Yes.

Q. Now, were you able to get water down that canal to the end of it?

A. Yes.

Q. Had no difficulty in getting water down to the end of the canal? [887]

A. No, we didn't have any difficulty, but the only trouble is that probably some at the end of the canal, some day they might say that the water went off; it was the big evaporation, that was on the hot days in the summer, and in 1940 we took off all the flash board, because by adding those flash boards and raising the water every once in a while, well, we was told by the engineer that it would evaporate more than if the water was left running, so after that year we didn't have any complaint any more.

Q. Well, now, as a matter of fact, wasn't it necessary for the farmers down toward the end of that canal to reduce their irrigated acreage because they couldn't get water enough to irrigate the total acreage they were entitled to irrigate?

A. No, that isn't true.

Q. That isn't true?

A. Everyone at the end of the canal, why, they had plenty of water, just like the ones that was up above.

Q. And you don't think that the seepage loss in the canals and ditches would reach 50 per cent of the water that was pumped into the ditches?

(Testimony of B. Salvini.)

A. Oh, no. I don't think it would be over 20 per cent.

Q. You don't think it would be over 20 per cent?

A. If it was that much. [888]

Mr. Ramsey: I think that's all. I might want to recall this witness in case I'm not able to elicit what I wish from the next witness.

Cross-Examination

By Mr. Powell:

Q. Mr. Salvini, I'll ask you to examine this treasurer's statement again. The next to the last item in the right hand side is the bond construction fund? A. Yes.

Q. The last line has the heading "Balance of fund in month." What was that?

A. \$16,421.00.

Q. That was offset against your warrant indebtedness you were just talking about, isn't it?

A. Yes.

Q. And did you also have some lands the District has since been paid for? A. Yes.

Q. Were they an asset of the District too?

A. Well, they were an asset of the District, yes.

Q. It was testified here on Tuesday or Wednesday that the bonded indebtedness at the time the power plant was taken in October, 1943, was \$165,000.00. A. Yes.

Q. The statement of February 28, 1943, shows \$173,000.00. What happened to the difference? [889]

A. Well, we paid some out of that \$16,600.00.

(Testimony of B. Salvini.)

Q. Now, we were talking about the generators, and the generator installed in '41, as accounting for a portion of the bonded indebtedness increase. Did you do any other work between '32 and '43? Was there a water wheel?

A. Well, I don't know if that we used—the water wheel was one item, then there was the work in the canal, when we first started, that was an item that goes in with it.

Q. What about the work in the canal in '41?

A. And the work in the canal, there was replacing several long flumes, and replacement of a full one lateral, and a part of another one, Blakely lateral, they called it, and replacement on part of the one at White Bluffs, because when we take this property over from the receiver they didn't do nothing, they just let it go to pieces. We couldn't run water unless we rehabilitate the whole thing. The power plant, we couldn't work it any more because they just run it in the summer, they let the canal fill up with sand and go to pieces. We had to do some work before we could get the power. At the time we run out from Hanford our bond was \$173,000.00; we had enough revenue to pay for it, all right; paid in advance with interest.

Q. Was there also an item that you spent for—what about the discharge pipe in the pumping station? [890]

A. Well, the discharge pipe at the pumping station, we had a carload of—

(Testimony of B. Salvini.)

Q. Carload of wood staves?

A. Wood staves, treated wood staves, right there on the place. We was going to rebuild the one to discharge. The other one was rebuilt just the year before, inside, with 2 by 6's, and we was going to put in a new one of the other one; we had the staves right there, and the hooks, and everything. They're still up there.

Q. Do you know how much that cost?

A. Well, the staves alone was around \$4500.00 or so, \$5000.00; I'm not saying the right amount.

Mr. Powell: That's all.

Redirect Examination

By Mr. Ramsey:

Q. Now, Mr. Salvini, you're telling about what you did after you took over the plant and the canal and the ditches, you just testified a while ago that was done out of the \$125,000.00 bond issue that was floated by the District at the time you purchased the property, didn't you?

A. No, that first bond issue was, we just barely had enough to satisfy the receiver, I think it is, and they didn't have quite enough to do the necessary work on the repair of whatever we took over, to get the ditches and laterals in shape, because it didn't was enough money; whatever [891] the receiver indebtedness was, that took about all of it.

Q. Well, now, when did you increase your bonded indebtedness out there?

A. Well, I think it was at the time that we put in that wheel, the generator, at Priest Rapids.

(Testimony of B. Salvini.)

Q. In 1939?

A. I think it is around that time.

Q. So the extra amount represented by the increase of your bonded indebtedness in 1939 certainly wasn't used to do the necessary repair work when you took over those facilities in 1932, was it?

A. Well, we didn't have \$189,000.00 altogether; that \$189,000.00 includes the previous bonds, that wasn't paid.

Q. Yes, I understand that, but you didn't increase your bonded indebtedness above the \$125,000.00 until 1939, did you?

A. Well, I would say that we didn't increase it before, I think we—there was a lot of finances through some other way that I ain't got in my head any more; that's a long time in the past, and I don't remember.

Q. Well, you do know, Mr. Salvini, that you didn't pay for any of the repairs you found it necessary to make after you took over those facilities in '31 or '32 out of the increased bond issue made in 1939, did you? You didn't pay for the work—

A. I think—of course, we had the WPA up there working too.

Q. Well, now, let's have a direct answer to the question. A. I didn't remember.

Q. Well, now, Mr. Salvini, you do know that you didn't let the bills for cleaning out that canal up there, and replacing flumes, and things of that sort, done in 1931 or '32, run until 1939 when you

(Testimony of B. Salvini.)

increase your bond issue, to pay, did you? Those bills didn't run for seven or eight years, did they, unpaid?

A. No, they were paid.

Q. And they were paid in 1932 or '33, weren't they?

A. Well, I think they must have been.

Q. So they weren't paid out of the increased bond issue that was made in 1939, were they?

A. Which one?

Q. When you increased your outstanding bond issue from \$125,000.00 to \$185,000.00, or whatever you did increase it to, you didn't pay those bills back in 1931 or 1932 out of the extra money you got by increasing your bond issue in 1939 from \$125,000.00 to \$185,000.00, did you?

A. No, whenever we increased the bond issue we had I think it was \$90,000.00, or \$65,000.00, to the state, and we included it in this one.

Q. Well, I don't care who held the bonds. Let's have an [893] answer to the question.

A. I didn't remember when we had the order of finances.

Q. Even though you don't remember the exact manner of financing, you can answer the question. Read the question.

A. Well, naturally, if we just have that much money, we don't have any money——

Q. Well, that's not an answer to the question, Mr. Salvini. The reporter will read the question. Now, let's have a direct answer to it.

(Testimony of B. Salvini.)

(Whereupon, the reporter read the question, as follows: "Question: When you increased your outstanding bond issue from \$125,000.00 to \$185,000.00, or whatever you did increase it to, you didn't pay those bills back in 1931 or 1932 out of the extra money you got by increasing your bond issue in 1939 from \$125,000.00 to \$185,000.00, did you?")

A. No.

Q. In other words, those bills were all paid up, and the increase in 1939 was not due to the work that you did in 1932 on the power canal, and the increase in 1939 was not due to any replacement of flumes or any replacement of pipe lines or anything of that sort that was done back in 1932, was it? That wasn't what caused you to increase your bonded indebtedness in 1939, was it?

A. Well, not to stuff that was already made, no.

Q. No, that's the point exactly. That's all, Mr. Salvini.

The Court: Any further questions?

Mr. Powell: No, your Honor.

(Whereupon, there being no further questions, the witness was excused.)

The Court: The court will recess for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

R. S. REIERSON

recalled as a witness on behalf of the Petitioner testified as follows:

Direct Examination

By Mr. Ramsey:

Q. Mr. Reiersen, you are the secretary of the Priest Rapids Irrigation District?

A. Yes, sir.

Q. And prior to taking over the duties as secretary, you were a member of the Board of Directors of the Priest Rapids Irrigation District?

A. A member of the Board of Directors from 1940 until March of 1944.

Q. As secretary of the District you are the custodian of the records of the District?

A. That is right.

Q. I will ask you, Mr. Reiersen, whether about 1938 or 1939 the District, that is, the Priest Rapids Irrigation [895] District, optioned all of its lands acquired by foreclosure or other means, to the Priest Rapids Development Company?

A. The records show that they entered into an agreement with the Priest Rapids Development Company in 1939.

Q. Do you have the original contract that was entered into at that time?

A. I haven't been able to put my hands on it. I've been looking for it, and I couldn't find it in the files. Apparently the previous secretary must have mislaid it.

(Testimony of R. S. Reiersen.)

Q. Do you have a copy of that contract?

A. No, I haven't.

Q. If I showed you a copy of that contract would you recognize it? A. I will, yes.

Q. State whether or not as a part of that contract, and for the purpose of supporting that contract, there were certain resolutions adopted by the Board of Directors of the Priest Rapids Irrigation District? A. In 1939?

Q. Yes, resolutions. A. Yes, there were.

(Whereupon, copy of contract between Priest Rapids Irrigation District and Priest Rapids Development Company was marked Plaintiffs' Exhibit "B" for identification.) [896]

The Clerk: I've been using the word "Plaintiff" because I have a stamp that says "Plaintiff" and I don't have one that says "Petitioner."

Direct Examination

(Continued)

Q. Mr. Reiersen, I hand you plaintiff's identification "B", and ask you whether that is a copy of the contract to which you have referred?

A. That apparently is the correct copy, signed by Salvini and Serier. Salvini was president of the board at that time, and Kenneth Serier was the secretary.

Q. Now, to the original contract, however, was attached a list of lands covered thereby, isn't that true?

(Testimony of R. S. Reiersen.)

A. Yes, a list of the lands that were available for sale, that were owned by the District.

Q. Now, this copy doesn't have attached to it that list of lands? A. No.

Mr. Ramsey: I offer in evidence plaintiff's Exhibit "B" for identification.

Mr. Powell: We object as immaterial, if your Honor please, as having no bearing upon the issue before the jury, the matter of having determined the value of the properties.

The Court: It will be admitted. Objection overruled. Exception allowed. [897]

(Whereupon, Plaintiff's Exhibit "B" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Reiersen, do you have in your records a copy of the resolutions passed by the Board of Directors authorizing the drawing of this contract with the Priest Rapids Development Company?

A. It is on record in the minutes.

(Whereupon, copy of resolution was marked Plaintiff's Exhibit "C" for identification.)

Q. Mr. Reiersen, I hand you Plaintiff's identification "C", and ask you if that is a copy of the resolution adopted by the Board authorizing the District to enter into the contract with the Priest Rapids Development Company that has just come into evidence?

(Testimony of R. S. Reiersen.)

Mr. Powell: I might state to your Honor and the witness that I compared the copy with the original that appears in Mr. Reiersen's files, and it seems to be a copy.

Mr. Ramsey: The purpose of offering the copy, your Honor, is not to rob the files of the District.

The Court: Well, if no objection is made on the ground that it is a copy, the copy may be used.

A. That is the same copy.

Mr. Ramsey: I offer in evidence plaintiff's [898] exhibit "C".

The Court: It will be admitted:

(Whereupon, Plaintiff's Exhibit "C" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Reiersen, I'll ask you whether or not your records show that on the 7th day of May, 1940, a supplemental agreement was entered into between the Priest Rapids Irrigation District and the Priest Rapids Development Company, extending and somewhat changing the terms of the original contract of 1939?

A. That is in May of 1940?

Q. Yes.

A. A supplemental agreement was drawn up.

Q. Do you have the original of that supplemental agreement in the District files?

A. It should be. Just the minutes. The minutes are there on file, the resolution authorizing it. The

(Testimony of R. S. Reiersen.)

agreement apparently had been attached to the original copy; at least we couldn't find it.

Mr. Powell: I didn't get that answer.

A. The supplemental agreement has apparently been attached to the copy of the '39 agreement, and we have just the minutes there, a resolution authorizing that supplement agreement. [899]

(Whereupon, copy of 1940 supplemental agreement was marked Plaintiff's Exhibit "D" for identification.)

Q. I hand you Plaintiff's exhibit "D" and ask you if that is a copy of the 1940 supplemental contract referred to? And what was your answer?

A. That is the agreement, or that is the resolution.

The Court: You'll have to speak a little louder, Mr. Reiersen, please.

A. This is from the minutes of the——

The Court: What was the "this"?

A. The exhibit that he handed me.

Q. Well, that is entitled "This Agreement". Is that the agreement that was made between the Priest Rapids Irrigation District and the Priest Rapids Development Company on the 7th day of May, 1940? A. Yes.

The Court: Are you handing him now plaintiff's identification "D"?

Mr. Ramsey: Yes. We offer plaintiff's identification "D" in evidence.

Mr. Powell: Same objection, your Honor.

The Court: It will be admitted.

(Testimony of R. S. Reiersen.)

(Whereupon, Plaintiff's Exhibit "D" for identification was admitted in evidence.) [900]

Direct Examination

(Continued)

Q. Now, Mr. Reiersen, state whether or not that particular agreement was supported by resolutions of the Board of Directors? A. Yes, it was.

(Whereupon, copy of resolution was marked Plaintiff's Exhibit "E" for identification.)

Mr. Powell: If counsel has no objection I will hand the witness the original file.

Mr. Ramsey: Yes. I think the Court will understand that we have agreed with counsel to use copies, if they prove to be true copies.

The Court: Yes, the copies may be used, if no objection is made on that ground.

Q. I hand you, Mr. Reiersen, plaintiff's identification "E", and ask you what that document is?

A. That is a resolution passed by the Board of Directors of the Priest Rapids Irrigation District, a copy, on May 7, 1940.

Q. In relation and in connection with——

A. Authorizing the supplement agreement.

Q. Of May 7, 1940? A. Of May 7, 1940.

Mr. Ramsey: We offer plaintiff's identification "E" in evidence. [901]

Mr. Powell: Same objection, your Honor.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "E" for identification was admitted in evidence.)

(Testimony of R. S. Reiersen.)

Direct Examination

(Continued)

Q. Now, Mr. Reiersen, in 1943 was the contract of 1939 and '40 further extended by agreement between the Priest Rapids Irrigation District and the Priest Rapids Development Company?

A. By a resolution of the Board of Directors on February 15, if I remember correctly, the contract was extended to include another year.

Q. Do you have a copy of that particular resolution in your files?

A. I am sure there is a copy in the 1943 files.

(Whereupon, minutes of meeting of February 15, 1943, was marked Plaintiff's Exhibit "F" for identification.)

(Whereupon, resolution, was marked Plaintiff's Exhibit "G" for identification.)

Mr. Powell: To save my objecting, may it be understood that all these matters are over my objection?

The Court: Yes, all these matters in connection with the contract.

Q. I hand you, Mr. Reiersen, plaintiff's identification "F", [902] and I ask you what that is?

A. Exhibit "F" are the original minutes of the meeting of the Board of Directors on February 15, 1943.

Q. Dealing with what?

(Testimony of R. S. Reiersen.)

A. Business transacted at that meeting, including an extension of the contract or agreement with the Priest Rapids Development Company.

Q. I hand you plaintiff's Exhibit "G", and ask you what that document is?

A. That is the resolution authorizing the extension of that contract of March 13, 1939, as supplemented by said contract of May 7, 1940, and is now extended and kept in full force and effect until the 15th day of March, 1944.

Mr. Ramsey: I offer in evidence plaintiff's identifications "F" and "G", and ask leave of the Court to substitute therefor copies, and withdraw the exhibits.

Mr. Powell: That is agreeable.

The Court: Copies may be substituted. They will be admitted over objection of the defendant. Exception is allowed.

(Whereupon, Plaintiff's Exhibit "F" for identification was admitted in evidence.)

(Whereupon, Plaintiff's Exhibit "G" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Reiersen, on the 1st day of June, 1943, was [903] there a further resolution passed by the Board of Directors of the Priest Rapids Irrigation District relative to these contracts?

A. What date?

Q. June 1, 1943.

A. Yes, there was.

(Testimony of R. S. Reiersen.)

(Whereupon, copy of resolution dated June 1, 1943, was marked Plaintiff's Exhibit "H" for identification.)

Q. I hand you plaintiff's Exhibit "H" for identification, and ask you what that document is?

A. Plaintiff's "H" is a copy of a resolution passed by the Board of Directors of the Irrigation District on June 1, 1943, wherein the Priest Rapids Irrigation District is giving an option on lands of the District to the Priest Rapids Development Company.

Mr. Ramsey: I offer plaintiff's identification "H" in evidence.

The Court: It will be admitted, over objection of the defendants.

(Whereupon, Plaintiff's Exhibit "H" for identification was admitted in evidence.)

The Court: Was that last one the original, or a copy?

Mr. Ramsey: Copy, your Honor. [904]

(Whereupon, copy of supplemental agreement dated June 29, 1943, was marked Plaintiff's Exhibit "I" for identification.)

Direct Examination
(Continued)

Q. Mr. Reiersen, was there an agreement, a supplemental agreement or real estate contract, entered into about the 29th of June between the Priest Rap-

(Testimony of R. S. Reiersen.)

ids Irrigation District and the Priest Rapids Development Company covering Districts lands?

The Court: 1943?

Q. '43, yes. A. Yes.

Q. I hand you plaintiff's identification "I" and ask you whether that is a copy of such contract?

A. That is a copy.

Mr. Ramsey: I offer plaintiff's identification "I" in evidence.

Mr. Powell: I would like to make this further objection, your Honor, that the identification is dated on June 29, 1943, which was three months after the irrigation properties were taken over by the government, and therefore should have no material bearing in this case on that account.

The Court: Does it relate to the same land under option? [905]

Mr. Ramsey: Yes.

The Court: It will be admitted, then, over objection.

(Whereupon, Plaintiff's Exhibit "I" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Reiersen, with the exception of the last contract, the copy of the last contract admitted, the lands covered by the contracts are not attached to the copies, but as to the original contracts a description of the land was made a part of the contract, was it not?

(Testimony of R. S. Reiersen.)

A. In the original agreement?

Q. Yes.

A. My understanding was that the land was listed and classified into two groups.

Q. The contract, or option, or whatever you want to call it with the Priest Rapids Development Company covered all the lands of the District, that is, owned by the District, within the boundaries of the Irrigation District itself?

A. That's right.

Q. And by supplemental agreements any lands that were acquired by the District through foreclosure or otherwise within the boundaries of the District were added from time to time?

A. That's right. [906]

Q. So that at all times after the original agreement was entered into, the Priest Rapids Development Company had a contract or option, whichever you want to call it, covering all of the lands owned by the District within the boundaries of the District itself?

A. Yes.

Q. Now, Mr. Reiersen, if you know, what was the purpose of the District in entering into this contract with the Priest Rapids Development Company?

A. At the time this agreement or contract was entered into I wasn't on the Board, but my personal information and what I gathered when on the board, for colonization purposes, to bring in more settlers and also to develop the District in general.

Q. To colonize additional lands within the District?

(Testimony of R. S. Reiersen.)

A. Yes, and at the same time improve and develop the irrigation facilities of the District.

Q. Now, under this series of contracts or extensions of the original contract with the Priest Rapids Development Company, was there land sold within the District between 1939 and 1943 by the Priest Rapids Development Company?

A. From time to time sales were made. I believe there were about 43 contracts made.

Q. Some 43 tracts?

A. 43 contracts made, totalling about 685 acres.

Q. And that was additional lands within the District that had formerly been in the District ownership through foreclosure or otherwise?

A. That is right, yes.

Q. Was there additional lands being negotiated for sale by the Priest Rapids Development Company at the time that the government initiated the Hanford Project?

A. You mean were there—was the Priest Rapids Development Company contemplating sales, or negotiating sales?

Q. Yes, negotiating sales of additional lands at the time the government took over?

A. That was during the war time; as I recollect there were very few sales made at that time, and I don't remember anything being in the process of being marketed. The active salesman was sick in bed, had been for four or five months, and Marc Miller, the president, was working for the Army Engineers.

(Testimony of R. S. Reiersen.)

Q. Had all of the additional 600 acres or so of land that had been sold by the Priest Rapids Development Company been placed back under irrigation at the time that the government took over the area?

A. There were a few exceptions. Most of the tracts were irrigated. There were a few, one tract of about 80 acres, approximately 80 acres, that were sold to a man by the name of Mr. Supple for grazing purposes, and it [908] was not possible to furnish water with that, and it was sold with that understanding. We always had an understanding that the Development Company would not make a sale of land that couldn't be watered unless the buyer put in his own well.

Q. That was not included in the contract?

A. Not included in the contract, but it was a working agreement, a verbal agreement, that we had among ourselves at that time, or while I was on the Board.

Q. Now, let's see if I understand your working agreement. I'll state my understanding; you correct me if I'm wrong. You had a verbal agreement with the Priest Rapids Development Company aside from the contract, and outside the contract, that in the sale of lands they would not sell lands where it would be unduly expensive for the District to deliver water on those lands for irrigation purposes?

A. We were not to deliver or sell land where we couldn't deliver water; at the time we didn't want to spend money to furnish water to small tracts because we were working on a larger plan of development.

(Testimony of R. S. Reiersen.)

Q. In other words, Miller and his associates had agreed with you that before selling a particular tract of land, they would check with the District to see whether irrigation of the tract would impose an additional burden on the District of constructing facilities in order to irrigate [909] it?

A. That's right.

Q. The general understanding also was that as time went on and additional settlers were in the District, and additional money available for the construction of facilities, and additional demand for facilities arose, that the District would extend its facilities to other lands?

A. Yes, that's right.

Q. And then they would be sold by the Priest Rapids Development Company, and that was not a part of the contract, but simply a gentleman's agreement?

A. Gentlemen's agreement, yes.

Q. Between the District and the Development Company. I think that's all.

Cross-Examination

By Mr. Powell:

Q. You stated that as time went on you expected that other settlers would come in. Your situation was pretty well fixed on April 1, 1943, wasn't it, Mr. Reiersen? Did you have plenty of water to furnish all the lands?

A. We furnished water to all the land that we had a demand for during that year, '42.

Q. In '42? A. Yes.

(Testimony of R. S. Reiersen.)

Q. And were there additional lands that were to receive [910] water, or lands that made additional demands for water, between 1942 and April, 1943?

A. Were there additional demands?

Q. Additional demands for water.

A. From new——

Q. Yes, from new tracts.

The Court: From when?

Q. From '42 to April 1, '43. Did you answer, Mr. Reiersen?

A. Well, I want to be sure about the date. Is that from the 1st of 1942, until April?

Q. No, from the close of the season in '42, when you said you had enough water to serve everybody who wanted water, until April 1, '43, were there any new lands requesting water?

A. There had been no additional sales made, and no new demands for water.

Q. Now, this gentlemen's agreement you testified to on your direct examination, was that carried through on all of the transactions that you had with reference to Mr. Miller?

A. Yes, that was an agreement when I came on the Board, and I thought it was part of the contract until I read it.

Q. What was the practice when a sale was being made in which a request might be made for water?

A. Mr. Adams or Mr. Miller would contact the secretary or [911] the Board members and inform them that he had a purchaser for a certain tract, and what was the Board's desire in that respect,

(Testimony of R. S. Reiersen.)

and if they O.K.'d it, why, he closed the deal, and if the Board members thought they couldn't furnish water, they would disapprove it.

Q. And after their disapproval what happened?

A. They would locate them on some other tract, as a rule.

Q. Did you have in the fall of '42 sufficient water to irrigate additional property other than the properties being served?

A. We had a full canal with water usually running out the end of the canal, overflow.

Q. Why were these tracts, then, that you didn't—I mean, why did you not agree to deliver water to these tracts?

A. That might have been sold?

Q. Yes.

A. For the simple reason that there are a large number—if we take the time when the District was first formed, the Hanford Power and Irrigation canal served probably originally around 3500 acres, and when the irrigation district was formed they set certain boundaries, took the portion north of the canal from Coyote Junction to below Hanford, and that land lying between the canal and the river, and then the elections were held whereby the people could have their property excluded within this border. A large number of the people who had their own pumping plants or wells were excluded, so that the Priest Rapids Irrigation District is a checker-board area, and a large amount of this land didn't have any canals or pipe lines serving them.

(Testimony of R. S. Reiersen.)

Q. That is, from the main canal?

A. From the main canal, yes.

Q. Was there plenty of water in the canal to serve them, I mean in the main canal?

A. There was plenty of water to serve additional acreage by reducing the amount.

Q. By reducing what amount?

A. We sold about 100 acres of water from the canal to farmers who were not in the district, and we could have cut them off of service and supplied it to our members within the District.

Q. And could you have supplied additional lands by reducing the amount delivered to each farmer?

A. By reducing the delivery from the 96 acre inches down.

Q. Do you know how many additional acres that would serve?

A. I wouldn't want to state.

Mr. Ramsey: Just a minute; I would ask to have that question made clear. Does counsel propose to reduce the amount given to each acre to six inches?

Mr. Powell: He says he doesn't know, anyway, so [913] I'm not going to ask him.

Cross-Examination

(Continued)

Q. Now, Mr. Reiersen, in the spring of 1943 you, or the District, entered into a contract with Mr. Miller for the sale of some property. That contract

(Testimony of R. S. Reiersen.)

has been introduced in evidence here, and purports to be a contract for the sale of farm property.

A. It is the same contract.

Q. No, I'm referring to the June contract, in 1943.

A. Yes.

Q. Plaintiff's Exhibit "I", Mr. Reiersen; you say it is the same contract what?

A. This is the same form used in the other '43 sales that were made. I say there were 43 contract sales made. This would be 44.

Q. Well, now, look at the contract. Is it dated in '44?

The Court: He means number 44.

A. This is the form used for contract sales by the Irrigation District to the Priest Rapids Development Company.

Q. And that contract was a regular farm sales contract?

A. That's right.

Q. Were you there at White Bluffs and Hanford on June 29, 1943?

A. Yes.

Q. What were the conditions then; who was farming property? [914]

A. There was no farming at the time. The irrigation district didn't operate that season.

Q. And were all the farmers still living there on June 29, 1943?

A. About June 29 I'd say 50 to 75 per cent of the families had moved from the valley and purchased places elsewhere. The only ones who remained were half a dozen or so who had fruit

(Testimony of R. S. Reiersen.)

orchards and were trying to harvest their fruit, and a few merchants in town.

Q. Pardon?

A. And a few merchants in town.

Q. You were still there at that time?

A. Yes.

Q. And where was Mr. Salvini?

A. Living on his farm between Hanford and White Bluffs.

Q. And did you and Mr. Miller know that there wouldn't be any irrigation water delivered on the property?

A. Yes, that was understood. I had received orders, verbal orders, from Fuller of the Army Engineers at Prosser that there would be no planting and no harvesting in 1943. I made inquiry, because I didn't want to spend \$2000.00 or so, \$1500.00 or \$2000.00, in the customary maintenance work on the irrigation canal that season. We had reason to believe that something would happen, because they were crowding us by that time. [915]

Q. Referring to the date of June 29, 1943, had there been any mass meetings of the people there?

A. There was a mass meeting along about March or April, to inform the people that they had to be out at a definite time.

Q. Had any work started in construction on the Hanford Project?

A. Work started just shortly after March 6, on the day we received notice.

(Testimony of R. S. Reiersen.)

Q. And what was the condition of the work on June 29?

A. A tremendous amount of construction, railroad, highway.

Q. Do you know whether or not Mr. Miller had received any offers from the government for the purchase of the property described in the contract?

A. I——

Q. Do you know whether or not Mr. Miller had received any offers from the government for the properties described in the contract?

A. At this time?

Q. Yes, at that time.

A. I don't think so; he wouldn't have because at that time he didn't have—the property was listed in the irrigation district's name up until June 29.

Q. No, I'm referring to June 29, 1943.

A. Yes. [916]

Q. You don't think he had any offers then?

A. Not on the lands on this, if that's what you refer to.

Q. Yes, I'm referring to that.

A. I don't see how he would.

Redirect Examination

By Mr. Ramsey:

Q. Mr. Reiersen, you say there was no demands for delivery of water on lands of the Priest Rapids Irrigation District between the end of the season of 1942 and April of 1943. There wouldn't normally be any demand for water after the irrigation season until the irrigation started the next year, would there?

(Testimony of R. S. Reierson.)

A. I might explain that by stating the only demand we had for water, it was the custom that the farmers should sign up for water for the succeeding year, and the secretary took those applications. A certain amount made those applications. The others would let it go until spring, but that was for current farming. New sales, we had no—there was no new sales made during that period.

The Court: There have been a number of references to the irrigation season here. I'm not sure that the record shows what the season was. I wonder if that shouldn't be brought out.

Q. What was the irrigation season, Mr. Reierson, usually?

A. From March 15, sometimes April 15, on to about the 1st day of October? [917]

Q. And in 1943, of course, the Hanford Project had been initiated about February 23, 1943?

A. Yes.

Q. So after the end of the irrigation season in 1942 there was no irrigation of any lands in the district thereafter by the District?

A. That's the last year we operated, or irrigated.

Q. There was water pumped through the canals in the District by the government contractor, wasn't there?

A. DuPont contractors operated the pumping plant.

Q. But the District itself did not supply water for irrigation in 1943? A. No.

Mr. Ramsey: I think that's all.

(Testimony of R. S. Reiersen.)

Mr. Powell: I just have two or three questions on the financial condition of the District. I can ask them now, or later.

The Court: Well, we had better recess until 1:30.

(Whereupon, the Court took a recess in this cause until 1:30 o'clock p. m.)

Yakima, Washington, February 18, 1947

1:30 o'Clock P.M.

(All parties present as before, and the trial was [918] resumed.)

Recross-Examination

By Mr. Powell:

Q. Mr. Reiersen, when were you elected to the Board of Directors?

A. I was elected to take office on January 1, 1940.

Q. You were in the District from '32 on until you left in '43 weren't you?

A. Yes, I arrived there in 1927.

Q. There is evidence that the bonded indebtedness of the District was \$125,000.00 in 1932. What was the bonded indebtedness in 1940?

A. \$89,500.00.

Q. And at that time was there an additional bond issue?

A. In 1940, along July, we paid off \$500.00, leaving a balance of \$89,000.00, and during that same year the District re-financed, floating an additional \$100,000.00 bond issue, making a total of \$189,000.00.

Q. And what was the bond issue in February, 1943?

(Testimony of R. S. Reiersen.)

A. We had reduced that by about \$8,000.00 plus interest each year, until '43; there was a balance of \$173,000.00.

Q. Did you further reduce it thereafter?

A. Another payment was made on July 1, reducing it to \$165,000.00.

(Whereupon, letter from Priest Rapids Development Company dated February 4, 1943, was [919] marked Defendant's Exhibit No. 21 for identification.)

(Whereupon, letter from Priest Rapids Development Company dated April 9, 1943, was marked Defendant's Exhibit No. 22 for identification.)

Q. I hand you defendant's identification 21, Mr. Reiersen, and will ask you if you know what it is?

A. That is a letter received from the Priest Rapids Development Company president, Marc Miller.

Q. Is it part of the records—

A. It was received by the Board, and is part of the records and correspondence of the District.

Q. Does it refer to the option agreement that has been introduced in evidence? A. Yes.

Q. And does the same apply to identification 22?

A. This letter was also received by the Board of Directors from Marc Miller.

Q. Does it refer to the option agreement introduced in evidence? A. Yes.

Q. At that time was Mr. Miller there at White Bluffs?

(Testimony of R. S. Reiersen.)

A. The letter—no, the first letter, the first exhibit, he was not there.

Q. By exhibit you mean identification 21? [920]

A. Yes.

Q. Where was he?

A. I don't recall whether it was written from Seattle, or where. He was with the Army Engineers.

Q. What was he doing with them?

A. Appraiser.

Mr. Powell: We offer both letters, your Honor.

Mr. Ramsey: I don't know the purpose that counsel has in mind in offering the exhibits. For what purpose are they offered?

Mr. Powell: To show the circumstances under which the extension was made, your Honor. I assume that there will be an argument of counsel that the irrigation district extended the option and gave these deeds after the Project was commenced, and the purpose of the letters is to show the reason why the option was extended.

The Court: May I see them, please? I can tell more about it.

Mr. Ramsey: I can't see the materiality of attempting to go into the various reasons which may have led to the drawing of a contract agreement. The contract speaks for itself. Whatever may have been in contemplation of the parties that led them to enter into the contract, the final result is the contract, and I see no materiality in going into what may have been in the minds [921] or the contemplation of the parties to the contract, and for that

reason I object to the introduction of the exhibits. It seems to me that we will simply be encumbering our records with a lot of immaterial issues here, if that sort of thing is permitted to go in.

The Court: They will be admitted, as throwing some light on the transaction. Exception allowed.

(Whereupon, Defendant's Exhibit No. 21 for identification was admitted in evidence.)

(Whereupon, Defendant's Exhibit No. 22 for identification was admitted in evidence.)

Mr. Powell: That's all.

Mr. Ramsey: That's all.

The Court: That's all, then, Mr. Reiersen.

(Whereupon, there being no further questions, the witness was excused.)

C. MARC MILLER

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Ramsey:

Q. Mr. Miller, where do you reside?

A. Seattle, Washington.

Q. And what line of work are you engaged in?

A. I'm a real estate broker.

Q. How long have you been engaged in that type of business? A. About 20 years. [922]

Q. What connection, if any, did you have with the Priest Rapids Development Company?

(Testimony of C. Marc Miller.)

A. I was one of the organizers of the Priest Rapids Development Company, and during most of its life the president of the company.

Q. Now, for what purpose was the Priest Rapids Development Company organized?

A. For the handling of the lands, the sale of the lands within the Priest Rapids Irrigation District.

Q. Were offices maintained by the company for that purpose?

A. Yes, sir, at White Bluffs, Washington.

Q. And over how long a period of time were those offices maintained there?

A. From 1939, it might have been the latter part of 1938, until 1943.

Q. Were you carrying on during that period of time a general real estate broker's business in connection with the affairs of the Priest Rapids Development Company, or devoting all of your time to the sale of the District lands?

A. We were handling general brokerage business in addition to the sale of the lands within the District, of the District lands.

Q. Did you have any sort of working agreement or contract with the District in the matter of the sale of District [923] owned lands?

A. Yes, we had an option on the lands within the Priest Rapids Irrigation District. It was entered into in the spring, I think the first contract was in January of 1939, and that was changed to a new contract in March of '39, I think the 13th day of March, 1939.

(Testimony of C. Marc Miller.)

Q. Some changes made in the contract entered into in January and the one in March?

A. Yes; I don't remember now just what the changes were.

Q. For how long a period was this 1939 contract entered into?

Mr. Powell: Objected to as not the best evidence. The contract is in evidence.

Mr. Ramsey: That's true, your Honor.

The Court: Read the question.

(Whereupon, the reporter read the last previous question.)

Mr. Ramsey: It is merely a preliminary question.

The Court: I don't believe the question is clear. Do you mean how long the negotiations extended?

Mr. Ramsey: No, your Honor. I'll reframe that question.

Direct Examination

(Continued)

Q. Under the 1939 contract you say you were given an option on all of the district lands? [924]

A. Yes, all of the lands which then belonged to the irrigation district on which they could give me an option. There were certain lands within the District that they had other agreements on, that were not included in the original agreement.

Q. Then you would say that your option under that '39 contract extended to all the lands where the title was not already encumbered by an outstanding contract of sale?

A. Yes, sir.

(Testimony of C. Marc Miller.)

Q. Belonging to the District? A. Yes.

Q. Now, how long a period were you given an option on these lands under that contract?

Mr. Powell: That is the question I object to, your Honor.

The Court: Well, I'll overrule the objection. It is shown here.

A. That contract was to run for two years with provisions for renewal at the end of that two years if we complied with certain specified parts of the contract as to the number of acres we had to sell, and other things involved.

Q. Now, was that contract subsequently renewed? A. Yes, sir.

Q. And more than once? A. Twice. [925]

Q. And was the contract as renewed in effect at the time that the government initiated the Hanford Project? A. Yes, sir.

Q. Now, Mr. Miller, by the subsequent renewals of that contract was any additional lands included in the options which were granted you by the District?

A. Yes, the subsequent agreements included all additional land which the irrigation district acquired, and as they acquired land the contract was extended to include that land; I meant as the district acquired land, there was a large block of land that they had some other agreements on, that they cleared title to, and that became a part of my contract, and then the additional land which they acquired by foreclosure of the irrigation assessments was then included.

(Testimony of C. Marc Miller.)

Q. Did your option cover all of the District owned land within the boundaries of the District not covered by other contracts of sale to other parties, at the time that the government took over the area? A. Yes.

Q. Under your contract with the District between 1939 and 1943 did you sell any of the lands belonging to the District? A. Yes, we did.

Q. Do you know the exact amount of land that was so sold by [926] you, that is, by the Priest Rapids Development Company?

A. Well, for what period, Mr. Ramsey?

Q. Between 1939 and 1943, say February 23, 1943.

A. I was of the opinion it was in excess of 500 acres. I heard Mr. Reiersen's testimony of about 600 acres, and I think that is substantially correct.

Q. You don't know the exact acreage?

A. No.

Q. Now, did the taking over of the area by the government interrupt the sale of additional lands belonging to the District that you had under option?

A. Yes, it did.

Q. And do you know about what acreage of land would have been involved in those transactions had it not been stopped by the government's condemnation proceeding?

A. Well, that involves quite a lot, Mr. Ramsey; the original contract—I'm trying to answer your question, and I don't want to go back; the original contract was entered into for one purpose, and when

(Testimony of C. Marc Miller.)

you enter into a contract you can't anticipate all the changes that will be in effect through the life of it, and we had carried on a colonization program there, and had a good number of prospective purchasers at the time the government acquired the land, but the purchasers were delaying their actual purchase until other lands could be put under the [927] irrigation system.

Q. Now, just generally, Mr. Miller, is there anything relative to this contract or to the working agreement that you had with the District outside of the contract itself that you can add to what has already been testified to or has it all been pretty well covered?

A. Well, there was one matter that was brought up limiting the right I had to sell land on which irrigation water could be furnished. That was definitely in the contract, not only a verbal understanding between the Development Company and the District, but it was part of the written contract, that I could not sell land, and I may not be exactly clear on the phraseology, but it was something to this effect: "That land beyond the services of the present irrigation system could not be sold to a purchaser who required irrigation water from the present irrigation system, excepting the purchaser could waive that right if he wished to irrigate the land by other means himself"; by that, either drilling a well, or extending a pipe line to existing irrigation facilities if water could be furnished to him from that facility.

(Testimony of C. Marc Miller.)

Q. Then Mr. Reiersen was in error when he said he thought that was simply a gentlemen's agreement? It was really a part of the contract itself?

A. Well, Mr. Reiersen, I think—yes, he was in error. I [928] don't think it was intentional; I think Mr. Reiersen had in mind a little more than was in the contract; I could not sell the land without going to them, and as a practical matter, the purchaser wouldn't buy the land unless he knew that water could be furnished there.

Q. Now, is it a fact that the District had in contemplation and the Priest Rapids Development Company had in contemplation the sale of these lands in such a manner that first would be sold those lands that could be served by the existing facilities of the District, and then later the lands could be sold by extension of the facilities of the District?

Mr. Powell: I object, as going beyond the day of taking, if your Honor please. I understood we were chopping this matter off as of the day the properties were taken.

Mr. Ramsey: I don't assume there would have been any sale or extension of the facilities after the date of taking.

The Court: I'll overrule the objection.

A. We tried to sell the land that a purchaser wished. It is awfully hard to guide a purchaser on the purchase of land, but we would take a purchaser through the District and if he selected a tract of land, my first operation would be then to go to the Irrigation District to see if [929] water could be furnished that land. Many times the land was re-

(Testimony of C. Marc Miller.)

moved from the irrigation system, and water could not be furnished to it. I would then at the instance of the district try to sell the land where the water could be furnished.

Q. Then would you say it was the purpose of the District and the Development Company to first sell and locate the settlers on lands that could be served from the then existing facilities of the District?

A. Yes, that was forced upon us, afterwards. When we first entered into this contract it was assumed we would soon have water to furnish practically all of the land within the District.

Q. The plan after the sale of the land that could be served by the then existing facilities of the District was to extend the facilities so as to make available facilities for the irrigation of other lands?

Mr. Powell: If we're charged with the burden of extending the facilities, we should get the benefits of it. I renew my objection. Counsel is trying to imply that the entire burden was upon the power plant and the irrigation facilities.

Mr. Ramsey: I'm just trying to inquire into what the plan was as between the District and the Development Company in the marketing of the lands. [930]

The Court: The question is leading, I think.

Mr. Ramsey: I think unquestionably it is.

The Court: Although no objection was made on that ground. I think he may inquire into the arrangements. I'll overrule the objection.

(Whereupon, the reporter read the last previous question.)

(Testimony of C. Marc Miller.)

A. Not only extend the facilities, the present facilities were not proper. They had to be changed considerably, and the plan, the latest plans, were not only the extending of the facilities, but the installation and erection of a new pumping plant and additional irrigation facilities of the District.

Q. Now, Mr. Miller, during the year 1942 what was the situation out there with regard to a sufficiency of water in the lower end of the canal, the District canal?

A. Well, at the lower end of the canal there was water available to the land which was under cultivation there, but there was no additional water available for additional land at the lower end of the ditch or at other places throughout the District. The situation at the end of the ditch is like at the end of many ditches; the water might be available down there for certain times during the year, but it might not be available to it other times during the year, so it wouldn't pay a man to farm the land, the [931] District couldn't allow him to farm the land, because they might not be able to produce water there at certain times during the crop season.

Q. Was there any of the farmers served by the facilities of the District at the lower end of the ditch or elsewhere who found it expedient to reduce their irrigated acreage by reason of lack of water?

A. Well, I can cite one tract of ground that we sold, and I believe it was sold in 1941. I am referring to the tract of ground that was sold to—one was to Ira Heyer; he bought two tracts down there.

(Testimony of C. Marc Miller.)

He bought one five acre tract of land; the District was of the opinion they might be able to furnish water to this tract, and they did furnish water one year, but it was not successful, and he didn't farm it after that. It had not been farmed for a long time, and he purchased the land and he put water on it.

Q. But you say it wasn't successful?

A. But it wasn't successful.

Q. Do you mean by that that the farming operation was not successful?

A. I mean I think the principal reason it wasn't successful is he couldn't depend on water there.

Q. Uncertainty as to whether he would have water as needed on the tract? [932]

A. That's right.

Q. Now, where was that tract located with reference to the lower end of the canal?

A. It was at the very end—not the very end, but within a half mile of the end of the canal.

Q. And as I understand your testimony with regard to water in the lower end of the canal, there were times when there was water in the lower end of the canal, but it couldn't be depended upon throughout the irrigation season?

A. Yes, sir. May I explain that? It could be depended upon by those who had been using the water, but it couldn't be depended upon for additional acreage.

Mr. Ramsey: I think that's all.

(Testimony of C. Marc Miller.)

Cross-Examination

By Mr. Powell:

Q. Mr. Miller, you were limiting the sales of the property at the time, that is, since your option was entered into, to the sale of such lands as could be furnished water with the existing facilities of the District, isn't that right?

A. That is right, excepting where the purchaser would make other arrangements, or did not use water on the land.

Q. I see. Well, I meant such lands as were to be irrigated from the irrigation system.

A. Yes. [933]

Q. At the time you made these sales you didn't make them by making the representations that there would be a new system installed, did you?

A. In the very first part of our contract we did expect that there would be water available. If you remember, we had an application to the PWA or the WPA for a loan which would have rehabilitated the entire irrigation facilities, as well as the power plant, and that loan was approved by the authorities of the WPA and at that time many of our prospects purchased anticipating that water would be furnished through that source on the land.

Q. That situation, however, did not exist in '43, did it? A. No, it did not.

Q. And at that time, and before '43, immediately before '43, you were not selling any land with the representation that there would be a new irrigation system installed, were you?

(Testimony of C. Marc Miller.)

A. No. We did, however, show land, and I am referring to the land above Roberts' land, where we anticipated that there would be an additional pumping plant and additional facilities installed.

Q. That was the plan that you referred to, as to the extension of the existing facilities?

A. Part of the plan, yes.

Q. Now, the purpose of the colonization that was mentioned [934] in the contract, Mr. Miller, was to get farmers to come in and farm the land, wasn't it?

A. Yes, sir.

Q. The colonization that is referred to isn't the kind that is there now, was it? That is, you didn't have the present plan that is there now in your contract?

A. You mean the government?

Q. Yes, the plan of the government.

A. Lord, no; we had no anticipation of that.

Q. And the 600 acres you referred to were sold over a period of about four years?

A. Yes, sir.

Q. And part of that was not farm land?

A. Part of it was not farm land.

Q. About how many acres?

A. A very small part of it, I would say, oh, 60 or 70 acres of it—no, no, one 80 acre tract alone was not farm land.

Q. That was grazing land?

A. That was grazing land; maybe 150 acres of it was not farm land.

Q. So there would be about 450 acres of farm land?

A. Yes.

(Testimony of C. Marc Miller.)

Q. And do you know whether all that property took water from the canal? [935]

A. No, it did not. Some of those tracts of ground pumped by well.

Q. When this contract came up for renewal in 1943, the original contract expired, I believe, March 3, 1943?

A. I think that is right.

Q. And there is no schedule attached to the exhibit, although it is referred to in the exhibit, plaintiff's exhibit "B," there is no schedule attached to the exhibit although there was on the original contract, was there not?

A. I don't know which you're referring to, Mr. Powell.

Q. B is the March 13 contract.

A. Yes, there was an exhibit attached to this, which was the land then belonging to the District on which there were no encumbrances.

Q. Well, there were two schedules, were there not, one showing irrigable and the other one non-irrigable lands?

A. That's right.

Q. Do you recall the acreages?

A. The total acreage in that contract?

Q. No, the acreage of irrigable and the acreage of non-irrigable.

A. At that time, I don't know, they changed so, I don't remember what the original acreages was. I am trying to remember. I don't believe the original acreages was over 3,000 acres. [936]

Q. Of non-irrigable?

A. Of all the land.

(Testimony of C. Marc Miller.)

Q. The original contract, that was the original contract of January, 1939, wasn't it? A. Yes.

Q. And then as the *country* treasurer issued deeds on foreclosure of assessments you acquired additional lands under your contract?

A. Yes, sir.

Q. You don't know how the land was divided between irrigable and non-irrigable?

A. We divided that in 1943, and we arrived at the exact acreage then. The acreage prior to that I don't know, and we never compiled those figures.

Q. What was the acreage in 1943?

A. It is stated in the contract. I don't remember. If you have the contract introduced in evidence I think that is in there.

Q. I don't think it is, Mr. Miller. The contract you referred to was the one of June 29?

A. Yes, sir. This contract contains 1615.46 acres of land which was considered irrigable. This contract also includes 8791.70 acres of land which was considered not irrigable.

Q. The total of the land covered by that contract, then, is [937] approximately or slightly over 10,000 acres, isn't it?

A. Yes, sir. I might add that subsequent to that contract there were a matter of small acreages the title reports showed did not belong to the District, which were then excluded from this contract. I believe there was one section of ground belonging to the State of Washington that was excluded. I believe also that the original contract included part of

(Testimony of C. Marc Miller.)

the old town of White Bluffs, which was excluded, although I might be wrong as to the last.

Q. Then Mr. Reiersen has given us the District owned lands at the time of the taking as 10,165.27 acres. Is that substantially correct?

A. I would think so.

Q. And the District land he referred to there is the District land covered by your contract?

A. Yes, sir.

Q. And that property was within this Hanford Engineering Works area?

A. Yes, sir.

Q. And was taken by the government?

A. Yes.

Q. You and the directors knew when you entered into the June 29 contract, did you not, that the government would take this property? [938]

A. We anticipated that they would, because they had already filed an intention of taking the property.

Q. When the contract recites the fact of assessments of land you didn't anticipate it would be assessed?

A. No; as a matter of fact I believe in addition to that there was an understanding between the Development Company and the District there would be no water furnished to this land in 1943.

Q. When the government took this property did they take it as dry land, or irrigated land?

A. Well, they took it as land within the Irrigation District.

(Testimony of C. Marc Miller.)

Q. Well, was it appraised as dry land, or farm land?

A. It was appraised as irrigation district land.

Q. Well, I don't think that quite answers my question.

A. Well, it is a very hard thing to answer, Mr. Powell. It was appraised at the fair market value of irrigation district land, based on——

Q. That I believe is a conclusion, Mr. Miller, and I move to have it stricken.

Mr. Ramsey: Well, I represent to the Court that the entire line of questioning is calling for a conclusion of the witness on something that he's not qualified to testify on anyway, as to how the government appraised the land, unless he further qualifies him.

Mr. Powell: Well, that may be true. I'll not [939] pursue it further.

Cross-Examination

(Continued)

Q. How much did the government pay for this 10,000 acres of land?

A. That was purchased in several different tracts. They did not appraise it in total, they appraised it by small tracts. I can give you that in round figures, Mr. Powell, but I can't tell you exactly what they paid for this land unless I take all my tract numbers and total it.

Q. You haven't done that?

A. No, I haven't.

(Testimony of C. Marc Miller.)

Q. Mr. Reiersen has given us the figure of \$49,000.00; is that substantially correct?

A. I believe that is substantially correct. I did not know he had given that figure. I wasn't here when he testified.

Q. Now, as part of this plan of improvement of the irrigation district properties or facilities, Mr. Miller, wasn't it contemplated also that the power canal would be enlarged and the power plant increased to capacity?

A. Yes, there was considerable discussion on that, and at the time when the decision was made to do the work at the power canal, I somewhat objected to the expenditure of funds up there. I would rather have had it spent on the irrigation facilities so that we would have additional [940] land for sale. It meant that our whole operation was practically held in "suspenders" until they could get the additional water on land for us to sell.

Q. You did spend quite a lot of money, though, in trying to colonize the property?

A. Yes, sir, I had an associate with me by the name of J. G. Adams, who spent his entire time in the Priest Rapids valley. I, however, spent about half my time, not necessarily in the valley, but over the Northwest, trying to bring settlers into the area. I made trips to Utah several times trying to bring farmers from that area into the district.

Q. And in 1943 when you were negotiating for the renewal of the contract where were you employed?

A. I was employed by the Army Engineers.

(Testimony of C. Marc Miller.)

Q. In what capacity?

A. I was assistant project manager in the Seattle office, handling the acquisition of land for the Army.

Q. And when this project started you left that employ, did you? A. Yes.

Q. And took care of your interests in the Hanford area?

A. For two reasons. My associate, Mr. Adams, had been very sick, and he died about that time, and it was necessary for me to leave the Army in order to take care of my [941] interests in the Priest Rapids valley.

Q. And subsequently you were employed as an appraiser by the Department of Justice?

A. Yes, sir.

Q. That was after you settled your cases over there? A. Yes.

Q. When you settled your cases, Mr. Miller, you didn't get a deed from the Irrigation District, did you? A. On some of the tracts I did.

Q. On the majority of the tracts did you?

A. No. On the first tracts that we settled by direct negotiation I secured a deed from the Irrigation District and at the same time that I received a deed for those tracts, if there was contiguous property in one or two instances I acquired additional land that was included in the latter purchase, but the land was acquired by the government through condemnation action.

(Testimony of C. Marc Miller.)

Q. And in the settlements made the petition was signed by both you and the District, was it not? That is, I mean you did not get a deed and then sell it to the government, did you?

A. Yes, I did.

Mr. Ramsey: I submit to the Court this is improper cross-examination. It is improper for any purpose. When the government files a declaration of taking upon land it [942] isn't necessary that the parties exchange deeds. They're frozen in status quo. The interests of the parties are compensated for by order of the court. If he did go out and get these deeds they were useless.

The Court: I think I'll sustain the objection to further line of inquiry on this.

Mr. Powell: Well, I'm inclined to think you're right, your Honor. The whole matter is immaterial and I objected to it. The only purpose is that counsel may contend the contract showed an interest in the property as of the date the property was taken. I want to clarify that point to show that it was actually District property at all times, and not in the status——

The Court: Well, all that's been shown in the records so far is a contract to the Development Company, and I think he said there weren't deeds except in some instances.

Mr. Powell: The contract provides for deeds, and I want to show none was given under the contract.

Mr. Ramsey: The objection is interposed that all there is is an option to buy.

(Testimony of C. Marc Miller.)

The Court: You've got a contract——

Mr. Ramsey: Yes, which provides that upon payment of certain sums of money the District will execute a deed to the Priest Rapids Development Company. The government [943] comes along after that option is given, before the deal is closed, and files a declaration of taking. There the parties are with whatever interests they have, the right of the District to receive the sums under the option, the right of the Development Company to participate in the distribution of funds.

The Court: I think it is shown there was a contract and then the government took it. If they claim there was a deed prior to the taking it seems to me it is up to them to show it.

Cross-Examination

(Continued)

Q. Mr. Miller, prior to the taking of the property you were selling the property at the rate of about 100 a year?

The Court: 100 acres?

Q. 100 acres, excuse me.

A. Well, it would average out that way, Mr. Powell.

Q. I mean lands irrigated from the canal, or irrigated lands, let us say?

A. It would average out that way, but as a matter of fact the principal sales were made in 1940 and '41. In '42 there were very few sales made.

(Testimony of C. Marc Miller.)

Q. Now, as a matter of fact, wasn't the Priest Rapids Development Company actually the selling agent for the irrigation district?

Mr. Ramsey: Now, I submit to the Court that the [944] contract between the District and the Priest Rapids Development Company provides and expressly sets out under its terms in the exhibit here in this action that the Priest Rapids Development Company was not the selling agent.

The Court: Yes, I think the contract speaks for the arrangement here.

Mr. Ramsey: It is objected to as attempting to vary the terms of the written instrument.

The Court: The objection will be sustained.

Cross-Examination

(Continued)

Q. There was sufficient water in the canal, was there not, to irrigate more land than was actually under irrigation?

A. Yes, in certain localities there would be, I believe. The Directors could tell you that better than I could, but I believe there would be water available for certain lands at certain locations, not all the way through the District; certain parts of the District.

Q. And wasn't there also a plan discussed to reline the canal? A. Yes.

Mr. Ramsey: Well, now, if the Court please, if counsel is going into the proposition of relining 16 or 20 miles of the canal with concrete, I certainly object.

(Testimony of C. Marc Miller.)

The Court: I'll sustain the objection to that.

Mr. Powell: My point is, if your Honor please, and I don't want to pursue this, or argue with your Honor, but the evidence shows the canal was running full. Counsel has contended there were all these lands that were going to be irrigated. There was a lot of water to irrigate these lands. It is only for the purpose of showing there wasn't additional burden on the power plant.

Mr. Ramsey: Does counsel propose to show he could concrete this canal at thirty or fifty dollars a cubic yard, and then there would be no burden on the power plant? It would have taken five million dollars to concrete line that canal.

Mr. Powell: We wouldn't fill it with concrete.

The Court: I'll sustain the objection.

Mr. Powell: All right, your Honor.

Cross-Examination

(Continued)

Q. Now, Mr. Miller, at that time were there improved—between '40 and '43 were there improved farms changing hands rapidly in the Hanford area?

A. Not rapidly. There were a few, very few sales. There were some sales, but very few.

Q. Very few, of the improved farms?

A. That's right.

Q. And they were actually—did you have any listed? [946]

A. Yes, about four or five listed for sale.

(Testimony of C. Marc Miller.)

Q. Now, Mr. Miller, when your contract was made June 29, 1943, were the farmers gone out of the area?

A. Well, it is hard to say just what date they left. You say June, 1943; there were still some farmers in the district, I believe. About that time they were leaving, and there was a discussion as to whether they would be allowed to harvest some of their crops that year.

Q. Weren't they ordered to leave not later than July 7, 1943?

A. That's right, but you're in June, now.

Q. That's right, but June 29 was about the date the order came out, wasn't it?

A. Yes.

Q. And did you have at that time any prices from the government on the land being included in your contract?

Mr. Ramsey: I object, if the Court please, as being incompetent, irrelevant, and immaterial.

The Court: Overruled.

A. That is very hard for me to answer, Mr. Powell; I don't know. About that time the negotiator for the Army Engineers came to me on several tracts of ground. You know, they appraised it by individual tracts, and he came to me on some lands, and I believe some of it was included in this contract. I'm not sure. It was about that time. They might have come there earlier or later. [947]

Q. Work had been started on the project and was moving forward substantially at that time, wasn't it?

A. Yes.

Mr. Powell: That's all.

(Testimony of C. Marc Miller.)

Redirect Examination

By Mr. Ramsey:

Q. Now, Mr. Miller, on this figure of \$49,000.00 or somewhere in that neighborhood——

A. Yes.

Q. —— that you settled with the government for, as to lands covered by your option in the Priest Rapids Irrigation District, was that settlement figure predicated upon government appraisals, or upon your own figure that you set up for settlement?

A. It was a negotiated settlement, Mr. Ramsey.

Q. Now, you stated that after you had settled with the government as to the properties which you had and the interest in the properties which you had in the Priest Rapids Irrigation District, you became an appraiser for the Department of Justice. Prior to the time that you were hired by the Department of Justice as an appraiser, had you appeared in the trial of any cases as a witness for the land owner?

A. Yes, I did. I appraised for several of the land owners in the District, and I testified in this court as to valuation for the property owners, the land owners, in [948] the District.

Q. On numerous occasions? A. Yes, sir.

Q. So that you were a land owner in the irrigation district, you appeared as an appraiser and value witness for the land owner in the District, and you also served as an appraiser and have fixed value on lands in the District for the government?

A. Yes, sir.

(Testimony of C. Marc Miller.)

Q. Now, getting back to this classification of lands made under your contract, counsel referred to that as irrigable and non-irrigable. By the term "non-irrigable" was it intended to classify those lands as not being susceptible to irrigation?

A. Those lands were divided that way for several reasons. One reason was because the land was not worthy of irrigation.

Q. All of the land, or a portion of it?

A. A portion of the land. Part of the land was classified that way because it was too high in elevation to irrigate from the present facilities of the Irrigation District. I believe part of the land was also classified that way because it was beyond the irrigation facilities of the District, and there was considerable land in the sand dune area and in the rocky river bottom area of the north [949] end of the District which was classified as non-irrigable.

Q. As an over-all classification of non-irrigable land, then, was included those lands which were beyond the existing facilities of the District to irrigate at that time, that is, there was no laterals or pipe lines that extended out to where service could be given to the land?

A. That is right.

Q. And you did not intend by that classification to indicate that all of the acreage was not susceptible for use as irrigated agricultural land if the facilities of the district were extended to put the water on there?

A. That's right.

Mr. Ramsey: That's all.

The Court: Any further questions?

Mr. Powell: That's all, your Honor.

The Court: That's all, then, Mr. Miller.

(Whereupon, there being no further questions, the witness was excused. [990])

L. E. KURTICHANOF

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. Ramsey:

Q. Where do you reside, Mr. Kurtichanof?

A. Portland, Oregon.

Q. And what line of work are you engaged in?

A. I'm an electrical engineer in the independent practice.

Q. Do you maintain offices? A. I do.

Q. For the practice of your profession?

A. I do; I have for the past twenty four years.

Q. And where are those offices located?

A. At the present time in the Lewis Building.

Q. Do you hold any degrees as an engineer?

A. I am a graduate of Oregon State College, class of 1902, with the degree of Bachelor of Science in Electrical Engineering.

Q. Do you belong to any organization of engineers or electrical engineers?

A. I'm a fellow of the American Institute of Electrical Engineers. I'm also a life member, charter member of the Professional Engineers of Oregon.

(Testimony of L. E. Kurtichanof.)

Q. Are you licensed to practice your profession?

A. I have a license to practice in the States of Oregon and Washington. [951]

Q. Mr. Kurtichanof, have you ever appeared as a witness in cases involving valuation of electrical generating plants, transmission lines, and things of that character?

A. I have.

Q. On how many occasions?

A. Well, on three occasions in the past year.

Q. And what were those cases?

A. Two in this court; first, in the case of Benton County Public Utility District against the Pacific Power and Light Company, involving the areas between Prosser and Kennewick inclusive; one in Cowlitz County, Washington, in the Superior Court of the State of Washington; one in the case of the Klickitat County P. U. D. against the Pacific Power and Light Company, in this Court.

Q. Those two occasions, Mr. Kurtichanof, were condemnation cases instituted for the purpose of acquiring the properties of the Pacific Power and Light Company by the PUD'S?

A. That's right.

Q. And involved the valuation of the facilities taken over?

A. That's right.

Q. In the practice of your profession have you supervised construction of electrical installations?

A. I have.

Q. And to what extent? [952]

A. Well, quite a broad experience in design, construction and operation of steam and hydro-electric

(Testimony of L. E. Kurtichanof.)

power plants, substations, transmission lines, underground lines, distribution lines of all kinds; industrial plants.

Q. Have you acted in an advisory capacity and are you now acting in an advisory capacity to any organizations or public utility organizations or cities or irrigation districts or anything of that character involving these features?

A. Well, just at the present time I have some work on for the Lincoln Public Utility District, operating in the vicinity of Newport, Oregon. I also have an industrial plant in the city of Portland that is being remodeled. I have under way another contemplated condemnation case.

Q. And I believe you said that you have been engaged in this type of work for the past twenty-four years, did you say?

A. Well, it is longer than that. I've been in private practice for the past twenty four years, nearly twenty four; it will be twenty four years next month.

Q. Prior to that what did you engage in?

A. I have worked for privately owned utilities, industrial plants, ship-building concerns, mining concerns, and the like, and a cement manufacturing industry.

Q. In an engineering capacity? [953]

A. That is right.

Q. Now, Mr. Kurtichanof, are you familiar with the hydro-electric plant of the Priest Rapids Irrigation District, and the power canal and transmission line of the District?

A. I am.

(Testimony of L. E. Kurtichanof.)

Q. And when did you first make an investigation of those properties?

A. I first appeared on the field about August 7, 1943, and spent practically all the time until about September 24, with the exception of going back and forth on week-ends. Some week-ends I stayed over, as long as two weeks at a time here.

Q. You say you spent practically all of the time; do you mean in the examination of those particular properties?

A. Yes, and in the search for records pertaining to these properties.

Q. And what was the occasion of your making the investigation of those properties during that period?

A. I was asked by the District Office of the Corps of Engineers, United States Army, about the middle of May to come up and discuss certain phases of a project being undertaken then which is now known as the Hanford project. At that time it was contemplated that I should make an examination of additional properties such as those [954] owned by the Pacific Power and Light, as well as the presently discussed facilities.

Q. And going now to that discussion, were you employed to make an examination of these properties?

A. Yes; although the final contract was not signed by the division engineer in San Francisco until early in September, I took the assignment under a verbal arrangement and went to the field for the first time on August 7.

(Testimony of L. E. Kurtichanof.)

Q. Your examination was made for what purpose, Mr. Kurtichanof?

A. My assignment was to determine value of the property, but without strict definition of the word value, and it remained for me to define it in my own way of thinking.

Q. Now, for the purpose of determining the value of those properties, what investigations, if any, did you make other than a physical examination of the properties, if you did make such physical examination?

A. I did make the physical examination, and my conception of the determination of value was that a number of elements had to be given consideration. One was that of determining, if possible, the historical cost or the actual book cost of the property in question, furthermore to make estimates of depreciation retirements. Two was to make an estimate of reproduction cost new and determine the depreciated condition. Three, I should try to determine [955] the earning value of the property. Another, the market value of the property; and five, any other factor that would have a bearing on such determination.

Q. Now, you had in contemplation, then, the inquiry and investigation along these five lines?

A. That is right.

Q. Were you able to determine the historical book cost of the property? A. I could not.

Q. Then the second field of investigation, I believe, was reproduction cost less depreciation?

A. That is right.

(Testimony of L. E. Kurtichanof.)

Q. Were you able to determine that?

A. I did.

Q. The third field of investigation which you set up, I believe, was the earning capacity of the property, or the earning value of the property?

A. Yes. I made certain assumptions and arrived at a certain conclusion based on those assumptions.

Q. Were you able to obtain any data relative to the earning capacity or value of the property?

A. I obtained some data, yes, from records of the District, from records of the Pacific Power and Light Company, and other places where I could get records that were dependable. [956]

Q. Now, I guess I'm lost; what was the fourth field that you intended to investigate?

A. Market value.

Q. Were you able by investigation to determine what the market value of the property might be?

A. Due to the peculiar nature of the property it was my conclusion that I could not determine a market value.

Q. Now, your fifth field, I believe, was any other factor which in your opinion would have a bearing on the actual value of the property. Under that heading did you make any investigation?

A. I picked up all the information I could relative to the operations of the plant, giving consideration to its past performance and its expected performance, based on its experience.

(Testimony of L. E. Kurtichanof.)

Q. Did you examine into the history of the properties from the date of their construction and the actual financial history of the properties?

A. I made search for a history of the entire project while I was in the field. I gathered fragments here and there, and the most reliable history I got was through the courtesy of Mr. Hall, whom I contacted here, whom I was informed was acting consulting engineer for the District.

Q. That is the Mr. Hall who appeared here as a witness for the District? [957]

A. Yes. I was supplied by Mr. Hall with a history written by Mr. Moulton, of the firm of Moulton & Powell, I believe in Kennewick. Later I called on Mr. Moulton at his office in Kennewick and discussed certain features of the project. I also obtained certain fragments of history from Mr. Sanford, who at one time was an officer in the—I believe the Black Rock Irrigation and Power Company, and who is now connected with the Pacific Power and Light Company.

Q. Were you able to have access to the records of the District as to the actual production of power by the power plant throughout the time that it was in the hands of the District?

A. Yes. My first visit to the office of the District I think I saw Mr. Reiersen. He turned me over to Mr. Joe Grell, who at that time was manager in between times. He was extremely busy at that time of the Army project. He gave me the courtesy of

(Testimony of L. E. Kurtichanof.)

the office, supplied me with a key, and permitted me to go through all the maps and drawings and so on, like the letter file, anything of that nature. I also visited the power plant and the pumping plant to get such operating records as they would have. From that I found that the records were more or less discontinued, also that they were scattered between the offices of the District at White Bluffs, between the power plant, and between the pumping plant. On further inquiry I found [958] that the figures that were of interest to me were maintained in the offices of the Pacific Power and Light Company, because the operators at both the pumping plant and the generating plant had frequent contact by telephone and made reports to the power dispatcher of the Pacific Power and Light Company at Pasco. Upon later investigation I found company records such as I felt I needed at the Pacific Power and Light Company, and through their courtesy I was supplied with them.

Q. So that you had made available to you the records of the District at the District office, the records of the District at the power plant, the records of the District at the pumping plant, and also had made available to you the records kept by the P. P. & L. Company?

A. Records that were pertinent to the production and disposal of power, yes.

Q. Now, about what period of time did you spend in a physical examination of the properties referred to, Mr. Kurtichanof?

(Testimony of L. E. Kurtichanof.)

A. About a total of about twenty six days were occupied in the field.

Q. That was all spent in the actual physical examination of the power canal, the power plant, the transmission line and the pumping plant, is that correct?

A. And the examination of records and making such notes as [959] were necessary.

Q. Yes. Now, in the examination of the power canal, explain to the jury and the Court just what steps you took to examine and familiarize yourself with the replacement cost of that canal, other than the inquiries that you have mentioned.

A. Well, to begin with, when I undertook the job from the District Office of the Corps of Engineers they supplied me with some drawings, photostatic prints, and one thing and another presumably of this project. These included drawings, preliminary drawings apparently, and various steps in the development of plans of structures or one thing and another. Among them was a topographic survey of the route that this canal covers. I first covered this route on foot, made such observations as I could. Later I obtained the help of a surveying crew from the Army Engineers, together with a boat, went into the canal, measured its sections from the intake of the river to the power house, both in the old channel and in the cut-off channel built in about '41. At the time of this examination we made note of the classification of soil, such as gravel, boulders, solid rock, and so on, and noted obstructions in the

(Testimony of L. E. Kurtichanof.)

channel which made it ineffective to deliver the designed quantity of water. It impaired the generating capacity of the plant and all [960] such matters as that took into consideration.

Q. In your examination of that canal did you make any cross section drawings or anything of that character representing the conditions which you found in the various sections of the canal?

A. I did not do it personally, but the surveying crew under my direction did it. I attended them in all their activities except in making the final sketch.

(Whereupon, map of cross sections of power canal was marked Plaintiff's Exhibit No. J for identification.)

Direct Examination

(Continued)

Q. I hand you, Mr. Kurtichanof, plaintiff's identification "J", and ask you to identify that.

A. This is a record of our observations as to cross sections of the canals, made under my direction by a surveying crew borrowed from the Army Engineers, Hanford Project.

Q. Now, I note various points on the chart here which apparently represent cross sections.

A. That is right.

Q. At what distance along that canal did you take cross sections?

A. At various stations as identified on the section. Station "O" plus "OO", south bank. That is the section of intake and of cut-off canal. Then

(Testimony of L. E. Kurtichanof.)

the next station was [961] "Original canal opposite junction with cut-off", and so on; various irregular stations where the cross section would change.

Q. Your cross sections, however, identify the point on the canal at which the cross section was taken?

A. That is right.

Q. And the data that appears thereon is the data that applies to your findings at each particular section?

A. That is right.

Mr. Powell: No objection.

Mr. Ramsey: I haven't offered it, but if you have no objection——

The Court: It will be admitted.

(Whereupon, Plaintiff's Exhibit "J" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Kurtichanof, did you have available for your use in connection with your work and survey work, particularly upon the power canal, a topographic map of the area, prepared by the original builders of that canal and power plant?

A. Yes.

Q. And where was this map secured?

A. I'm not certain as to whether it was furnished me by the Army Engineers, or whether I obtained it at the office [962] of the Hanford Irrigation District. I think I got it from the Army Engineers. They gave me a large roll, and I did not separate—keep them separate from subsequent information.

(Testimony of L. E. Kurtichanof.)

(Whereupon, topography map of area of power plant was marked Plaintiff's Exhibit "K" for identification.)

Direct Examination

(Continued)

Q. I hand you plaintiff's identification "K"—Mr. Powell, I suggest that if you want to examine this it probably will be necessary for us all to look at it.

The Court: If you will have him identify it I'll recess.

Q. And ask you to identify the identification.

A. It bears the title "Hanford Irrigation and Power Company, H. R. Owens, Engineer; subject, Priest Rapids Topography above canal, drawing number B-172" and this is the drawing that I had in the field with me when examining the property.

Mr. Powell: Mr. Kurtichanof, did you check this contour map generally to be sure that it complies with the contours? You did not make the map? It is about 40 years old?

A. No, I didn't make the map. I used it for just my personal information at about the time that existed at the time this map was prepared, since involved in that was a [963] natural channel of the river, high water channel or lagoon, as it might be called, which was subsequently used as a portion of the power canal.

Mr. Powell: I don't know, then, if this would be material. If that is the only reason I have no ob-

jection. If there is any other purpose I would like to know what counsel has in mind.

The Court: Well, we'll recess now for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

Mr. Powell: No objection to the exhibit, your Honor.

L. E. KURTICHANOF

a witness called on behalf of the Petitioner, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Ramsey:

Q. Mr. Kurtichanof, I will ask you to step down from the witness stand and come here to the table, this exhibit is so big. Now, are you able to indicate on identification "K" the location of the present new intake to that canal?

A. It is approximately in this location.

The Court: You had better mark it, Mr. Kurtichanof.

Q. May I suggest that you mark——

A. Approximate location of new cut-off channel.

Q. Now, we've been having some difficulty, Mr. Kurtichanof, on our elevations here. I'll ask you to examine the elevations as shown on this map, and state whether they are the same elevations that

(Testimony of L. E. Kurtichanof.)

were used by the District in keeping its records, or whether they are the actual elevation?

A. I ran into some discrepancies in elevations upon both, on the topography and on building elevation drawings. However, in my observations of elevations in our survey of the canal we took the gauge heights of the gauges that were in place at the upper end of the intake canal and also at the lower end of the canal, immediately in front of the trash racks at the power house, so we ignored all other elevations.

Q. Now, in the examination of this map, did you find that they used that method of determining their elevations?

A. Oh, yes.

Mr. Ramsey: If I may suggest to the Court, I would like to turn the witness over to counsel in order that he can correlate his testimony with the figures that appear on this map, and also with the figures which Mr. Kurtichanof says he relied on, so we won't confuse the jury.

The Court: Very well.

Voir Dire Examination

By Mr. Powell:

Q. It is my understanding, Mr. Kurtichanof, that when this [965] map was made in 1906 or 1908, that the United States Geological Survey had not established bench marks in this area.

A. I don't know about that, but as is customary on any project where exact elevations are not known, arbitrary elevations are assumed, either

(Testimony of L. E. Kurtichanof.)

zero, or 100, or 1000, and all elevations are referred to the assumed elevations.

Q. And the elevations of the United States Geological Survey notes that are in evidence, and the gauge readings, are assumed to be the elevation above sea level? A. I believe so, yes.

Q. But the elevations shown on this map, "K", are elevations taken from an assumed elevation?

A. They might have been; I can't vouch for that.

Q. What I mean is, that the elevations on the map, identification "K", do not refer to the elevations above sea level?

A. I wouldn't know whether they do or not. I would believe that they do not.

Mr. Powell: I think that is correct, your Honor. This shows 480 feet in one place, and that is substantially greater than the elevations shown on the exhibits we have introduced.

A. It would be my judgment that this could not be tied in to the true elevations above sea level, as established by the Geological Survey. [966]

Mr. Ramsey: However, that would not affect the use of the map in determining the elevation of certain points with reference to the elevation of certain other points on the map? A. That is right.

Mr. Ramsey: I offer in evidence Plaintiff's Identification "K".

Mr. Powell: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "K" for identification was admitted in evidence.)

(Testimony of L. E. Kurtichanof.)

Direct Examination

(Continued)

By Mr. Ramsey:

Q. Now, Mr. Kurtichanof, how long a time did you put in in your examination of the power canal?

A. I can't say. I was examining all elements of the property practically at the same time, that is, I was making observations, and I did not divide the time between the various phases of it.

Q. But you put in twenty six days in the field on the examination of all the properties?

A. That is right.

Q. From your observation of the new intake channel, which I believe the testimony shows was cut in 1941——

A. '41, I believe.

Q. —— did you find that there had been any silting of that [967] channel?

A. Yes, it was practically closed. I would say that it was 75 to 80 per cent closed.

Q. By silting action?

A. By deposit of silt.

Q. Now, from your observation of the canal itself, did you find that silting action had gone on in the canal?

A. There was considerable evidence of it in the vicinity of the spillway channel, where a substantial reef of gravel deposit had been formed, effectively sealing off the flow through the spillway except at considerable—except at water elevations considerably higher than existed at the time of observation.

(Testimony of L. E. Kurtichanof.)

Q. Did you find evidence of that in other places lower down on the canal?

A. To a smaller degree. Somewhere in the vicinity of the upper end of the dump portion of the channel there was evidence that the channel was not cut originally to its designed width, because of solid rock, and at that point, or just immediately above there, there seemed to be some further deposit. Possibly some of it was due to sloughing in of the banks.

Q. From your observation and experience of water diverted from a stream which at times is heavily impregnated with silt and carried at a considerable less degree of fall [968] than the main stream, would you say that a silting process would be a natural thing to expect in this canal?

A. Yes. The matters carried in suspension in the flowing water are dropped as velocity is reduced. The heavier ones, of course, are dropped first, and the lighter ones last, progressively.

Q. Now, you have heard the testimony of work that was done on this canal, and yardage which was removed from the canal in 1939, or '40, or '41, or somewhere along in there. Now, in your opinion, was the yardage removed there entirely new yardage being excavated from the canal, or was it, in part, at least, a deposit of silt in the canal through the years since its construction?

Mr. Powell: Your Honor please, I think I should object to that question. He wasn't there, and couldn't tell.

(Testimony of L. E. Kurtichanof.)

Mr. Ramsey: No, but he made a very careful examination into all the factors involved.

The Court: Let's see, will you read the question?

(Whereupon, the reporter read the last previous question.)

The Court: I will overrule the objection. I suppose he could, as an expert, express an opinion.

A. In view of the conditions as I saw them at the time of inspection, I made inquiries as to the degree of maintenance [969] that had been experienced in the past, what methods were used, what quantities were possibly removed, and so on. I formed no opinion as to the quantities removed, nor the effectiveness thereof, except there was certain rock removed at some time or other within the last couple or three years, that is evident, and deposited on the banks of the canal, and it was explained to me that that was part of the rock removed at the time improvements were made both in the cut-off channel and in the original channel, but I of course could not identify them as such.

Q. You, then, didn't attempt to determine what part, if any, of the materials removed later from that canal may have been silt deposited there through the years, and what portion may have been new materials excavated?

A. I think it would have been impossible to determine that.

Q. Now, from your examination of that canal, and from the survey that you made of it, from your

(Testimony of L. E. Kurtichanof.)

study of the topography map of the area and the cross section survey that was made, did you determine the amount of materials that had been excavated in the construction of the canal?

A. I made an estimate of it, yes.

Q. You heard the testimony of preceding witnesses for the District as to the total excavation which they estimated was necessary for the construction of that canal being, I believe, 222,000 yards? [970]

A. Yes, I heard that.

Q. Did your estimate agree with that?

A. Very substantially, as I recall it. My estimate for the excavation quantities on the original canal were as follows: Rock, 26,130 yards; gravel, 173,106 yards, total, 199,236 yards; and in the cut-off, or new channel, my estimate was: Gravel, 17,375 yards; rock 4,444 yards, making a total of 21,819 yards. Thus, for the entire canal with its improvement, my estimate was: Gravel, 190,481 yards; rock, 30,574 yards, total, 221,055 yards.

Q. Wait a minute, I'd like to have those last two figures again. Total of gravel?

A. 190,481.

Q. Rock? A. Rock, 30,574; total, 221,055.

Q. Or a difference of less than 1000 cubic yards?

A. Pardon?

Q. A difference of less than 1000 cubic yards from the estimate of the defendant's witnesses?

A. I don't recall the exact figures testified to previously. This is taken from my field notes of the computation.

(Testimony of L. E. Kurtichanof.)

Q. Now, Mr. Kurtichanof, in estimating the reproduction cost of that canal what did you estimate for the rock work per yard? A. \$1.25. [971]

Q. And what did you estimate for the gravel?

A. 35 cents. I'll correct that. It was 35 cents in the cut-off canal, and 40 cents in the main canal. The reason for it being higher in the main canal, there was some over-haul involved.

Q. Any difference in your figure for the rock work in the main canal and in the cut-off?

A. No.

Q. Or a total cost of reconstructing the canal of how much?

A. Total estimated cost of reproduction new as of September 30, 1943, was \$131,465.00.

Q. Does that include any items other than excavation, that total?

A. Total cost of the canal.

Q. Now, what condition did you estimate that canal to be in or what per cent of depreciation, if any, did you make on the canal?

A. Due to the obstructions as found, impairing its full efficiency, I depreciated it in the amount of 30 per cent, or found 70 per cent condition.

Q. Making a reproduction cost less depreciation of what?

A. \$92,025.00. This depreciation that I have allowed for it, I might explain, is because of the greatly accrued deferred maintenance. If that maintenance had been kept up, then there would have been no depreciation charged [972] against that canal.

(Testimony of L. E. Kurtichanof.)

Q. As one item of that failure to maintain the canal, do you have in mind the condition of the newly cut entrance to the canal?

A. That, and elsewhere in the canal also, because of lack of adequate provisions for taking care of this silting up.

Q. Then if I understand your testimony, Mr. Kurtichanof, your 30 per cent so-called depreciation in the main represents what you estimated it would take to put that canal together with the intakes back into 100 per cent condition?

A. Substantially so, yes.

Q. Now, going on to the power plant itself, state just what investigation you made to determine the reproduction cost of that plant; that is, I'm speaking now specifically of the structures.

A. I measured the quantities involved therein and estimated the cost of labor.

Q. Now, state whether or not you had available the original drawings of the Hanford Irrigation and Power Company of that structure?

A. I had made available to me a number of drawings showing plans, sections and elevations. I took them along with me to see how closely the structure as built conformed to those representations on the drawings. Some of them I [973] found did not conform. One or two sections and part of a plan did conform substantially to it, and I used it as a guide in recording my measurements as found on it, and later computing the quantities involved.

(Testimony of L. E. Kurtichanof.)

(Whereupon, drawing of cross section of power plant was marked Plaintiff's Exhibit "L" for identification.)

Q. I hand you plaintiff's Exhibit "L" for identification, Mr. Kurtichanof, and ask you to identify it.

A. This is intended to represent a cross section through the power house, taken on the center line of one of the water wheel units.

Q. Now, from your examination of the power plant structure there, does that very closely approximate the building as you found it to be constructed?

A. This particular drawing does, yes.

Q. Now, I note that you have super-imposed upon that drawing some lines in pencil. What do they represent?

A. They are my observations as to the ground line existing at the present time, also the line of solid rock on which the building is founded in part. The rock was easily observable from the down-stream side of the power house, and the natural slope of the ground is, I believe, the same as it was at the time this was built, because it extends for a considerable distance both up-stream and [974] down-stream from where the power plant is now located.

Q. Does that cross section indicate the depth to which excavation was made in the rock?

A. Yes. I took measurements from given points on the structure down to the rock level, and thus determined its position with reference to the building.

(Testimony of L. E. Kurtichanof.)

Mr. Ramsey: We offer identification "L" in evidence.

The Court: Any objection?

Mr. Powell: No objection, your Honor.

The Court: Admitted.

(Whereupon, Plaintiff's Identification "L" was admitted in evidence.)

Mr. Powell: I might ask the witness two things. Does it show the generator?

A. No, this is only pertaining to the structure.

Mr. Powell: Oh, I see, it doesn't show the water wheel either?

A. No.

Direct Examination

(Continued)

Q. Now, with reference to the structure there, Mr. Kurtichanof, did you check and measure that structure for the purpose of determining the amount of concrete required for its erection?

A. Yes, for all purposes which I thought were essential in [975] determining the quantities of excavation, the classification of excavation, the classification of the soil, the quantity of concrete involved, and other materials.

Q. And from your investigation and observations there what did you determine to be the amount of rock that it was necessary to excavate for the erection of that building?

A. The amount of solid rock was estimated at 3292 cubic yards; gravel, 3700 cubic yards.

(Testimony of L. E. Kurtichanof.)

Q. Does that embrace all of the excavation that you believed to be necessary from your observation and investigation there, for the structure?

A. Yes, including the structure and the tail race.

Q. Now, what did you estimate to be the cost, as of September 30, 1943, of the solid rock excavation per cubic yard? A. \$1.25.

Q. And the cost of excavating the gravel?

A. 50 cents.

Q. Making a total cost of the two items for excavation how much?

A. I haven't computed it that way.

Q. How much concrete did you estimate would be required for the construction of that building?

A. 3520 cubic yards.

Q. And what did you estimate would be the cost of that concrete in 1943? [976] A. \$16.30.

Q. Per yard? A. Per yard.

Q. Was that your figure on re-enforced concrete, or did you have a separate item for the re-enforcement?

A. I had a separate item of re-enforcing mounting to 45,200 pounds, which I estimated to cost 8 cents per pound, in place.

Q. Or a total of how much? A. \$3616.00.

Q. Again? A. \$3616.00.

Q. Did you include as a part of the generating plant structure bar screens?

A. No, that was listed separately as equipment.

Q. Yes. Now, what other items, if any, did you include there?

(Testimony of L. E. Kurtichanof.)

A. A coffer dam and un-watering for the construction of the tail race, which I estimated at a lump sum of \$1000.00.

Mr. Powell: One thousand? A. Yes.

Q. What, then, would be your total reproduction cost of the generating plant structure?

A. I had several other items, Mr. Ramsey.

Q. Well, then, give us those items.

A. They're not very important, but there is a transformer [977] house which has been constructed on the down stream side over the draft tubes, which I estimated at \$1190.00; the machine shop, also built on the down-stream piles, on the up-stream end, I estimated at about \$225.00; windows, \$540.00; doors, \$172.00; plumbing, \$100.00; lighting, \$300.00; furniture and fixtures, \$200.00; crane, \$1750.00, making a total estimated cost of the power house building \$81,278.00.

Q. Now, did you depreciate that?

A. I did.

Q. And to what per cent?

A. To 83 per cent condition.

Q. 17 per cent depreciation?

A. That is right.

Q. Making a depreciated——

A. Depreciated value of \$67,468.00.

Q. Now, this matter of this crane; what value did you say you put on that? A. \$1750.00.

Q. How did you fix that value?

A. By getting prices from manufacturers. At the time I was designing in part and buying the

(Testimony of L. E. Kurtichanof.)

equipment for a plant just about the same size as this. I originally designed it to contain two units, one of 1500 and one of 500 kilowatts, but just before we closed the contract for the [978] equipment war came on, we couldn't get those, and later we acquired through the priorities division of the proper government authority two smaller units, 750 K.V.A. that were allocated to the Northern Idaho Rehabilitation and something or other project in Idaho, so I had to re-design the plant to contain three units of 750 kilowatts instead of 2000 as originally planned. The structure was about the same width, the crane span was about the same, and the load capacity was the same, ten tons, and that was bought for about \$1150.00. I believe, plus a ten ton chain block for \$300.00 and some odd dollars, and an estimate of the cost of installing it, which made a total of \$1750.00.

Q. So your value here ascribed to the crane was predicated upon actual price check?

A. At that time.

Q. For a comparable crane in 1943?

A. '43.

Q. With the chain block and cost of installation added?

A. Right.

Q. Now, in your examination of the power plant structure did you find that there had been any over-building in the structure?

A. Well, the project as built was designed to accommodate four additional units, and portions of the structure and sub-structure were built originally in 1907 and 1908, [979] whereas if the structure had

(Testimony of L. E. Kurtichanof.)

been designed for only the two units it contained, it would have been of substantially less cost.

Q. Is it possible to use four additional generators in that plant?

A. Not without other improvements. The canal would have to be increased very materially, the diversion facilities would have to be increased, and it would require a major operation on the entire project.

Q. Now, moving on to the generating plant itself, I'll ask you, Mr. Kurtichanof, in your checking of the floor plan of the structure and the installations in the structure itself, whether you had the use of a detailed plan?

A. It was detailed to some extent, to the extent of showing main dimensions of structural members, the spacing of units, I believe, and the head wall, only in part; it did not show the extensions of the head wall upstream, or down-stream, of the main structure.

Q. Did it show the location in the structure of the generators? A. Yes.

Q. Did it show the location in the structure of the transformers?

A. It did of the power house as planned and built originally. Now originally the power house was built to accommodate [980] six transformers along the upstream wall, six transformers of about 450 Kilowatts, I believe, rating, and it is my information that the initial transmission was at 22,000 volts. These transformers served that transmission

(Testimony of L. E. Kurtichanof.)

line. At some subsequent time the line was changed to 66,000 volts, new transformers of larger size were purchased, and installed over on top of the piers over the draft tubes.

(Whereupon, floor plan of power house was marked Plaintiff's Exhibit "M" for identification.)

Direct Examination

(Continued)

Q. I hand you, Mr. Kurtichanof, plaintiff's identification "M" and ask if this is the floor plan to which you have referred in your testimony?

A. Yes, this is.

Q. You checked this floor plan against the structure itself? A. Yes.

Q. In the main, did you find it correct in detail, with the exceptions noted?

A. Yes, the matter of occupancy of the transformer space was about all the difference, and on the down stream elevation this drawing does not show the present transformer structure.

Mr. Ramsey: I offer plaintiff's identification "M" in evidence. [981]

Mr. Powell: I might ask first of the witness where the identification was secured, and is it from a source that would indicate it was authentic?

A. Yes, it came to me either directly from the engineer, who in turn might have obtained them from the district, or from the District itself. I'm not certain.

(Testimony of L. E. Kurtichanof.)

Mr. Powell: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "M" for Identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Kurtichanof, from your examination of the installations in the power house, how many generators did you find there?

A. Two main units, one rated at 900 kilowatts, the other at 1200 kilowatts.

Q. And were these the same units that have been referred to by preceding witnesses?

A. Yes.

Q. One being an Allis Chalmers, and the other being a G. E.?

A. The number 2 generator is of General Electric manufacture, whereas number 1 is Allis Chalmers.

Q. From your examination of the two generating units, what did you determine as to the age of the two units?

A. Well, evidence was obtained that the number 1 generator [982] is the original one installed, and appeared of about 1907, together with the water wheel driving it. Number 2 generator was installed I believe about 1941, that is, put in service in 1941.

Q. Would you say that there was any degree of obsolescence in either of those units?

(Testimony of L. E. Kurtichanof.)

A. Not of appreciable moment in the case of number 2. There is a possibility of considerable in number 1. One reason for it would be that there might be some doubt as to whether or not the latest type of steel was used, for instance, in the core. Along in the period of about 1905 to 1910 it was discovered that the addition of silicon to steel improved its magnetic qualities, made it so-called "non-aging." It came into use much later, of course, and it is quite possible that this old generator did not use non-aging steel. That would be one element of obsolescence. In addition, I think there has been material improvement in the art of producing insulating materials used in the windings of the generator armature and field.

Q. Let me interrupt there long enough to ask you this; does the materials that you have mentioned, the insulation materials, have a very definite fixed life span due to use?

A. Not definite, no. It is greatly affected by conditions [983] of service and conditions of load.

Q. Well, let me ask, then, this. Does it have a limited life span under use?

A. Oh, yes, but that span, of course, again is very much affected by the conditions of service and load.

Q. Would the use of the particular unit, particular generator, for a period of forty years or such a matter materially affect the remaining life span of the insulating materials?

A. Normally you would expect that, yes.

(Testimony of L. E. Kurtichanof.)

Q. Now, passing on to the turbines, especially with regard to unit number 1, what did your examination disclose there?

A. From the information I obtained it was found to be what was called by the manufacturer a Triplex unit, and as near as I can determine, that unit was especially designed for this particular application, with the object in view of obtaining highest possible efficiency and rated output through a wide variation in head of water.

Q. Would that be an efficient unit to be used in this sort of a plant?

A. The unit as built is composed of three runners assembled on the same shaft, and a unique inter-connection between the various runners. It is my opinion that this combination, in order to obtain rated output, rather detracts from its possible efficiency if it were designed for only [984] a single runner. It is a Francis type of wheel, and for a specific head, specific performance, the Francis type wheel can be designed for relatively high efficiency, but with this combination interposing, I rather think that had some effect in reducing the over-all efficiency.

Q. In your opinion, would it be as efficient as the propeller type wheel used on the other unit?

A. Well, there again, a simple propeller type wheel can be designed for best efficiency for a specific condition. There are, however, modifications of the type, such as the moveable propeller, which is designed to operate a very high efficiency over a wide range of change in head, but the critical thing

(Testimony of L. E. Kurtichanof.)

about the Triplex is that because of its specific design, and more or less cumbersome design, it would be very expensive compared to units that will be equally efficient at the present time.

Q. In other words, if you were replacing that wheel in that plant at this time, you would be able to replace it with a wheel that would give an equal amount of efficiency at much lower cost than the cost of such a wheel as this?

A. That is true. I doubt if you could get an exact reproduction of that wheel now, except at very great cost, special order.

Q. Now, I'm not going to take time, Mr. Kurtichanof, to check through with you all the items of generating equipment. [985] I'll simply ask generally if your check-up agrees in the main with those items as detailed by Mr. Tinling and the other witnesses?

A. Referring to the power plant particularly?

Q. Yes, the generating equipment.

A. As I recall the testimony, it is substantially the same.

Q. Is there any additional items that you remember there that they did not mention?

A. I didn't remember, or I do not remember, any specific testimony pertaining to the head gates and trash racks as a separate item of cost. I have so treated them.

Q. With reference to the wiring in the power plant, and specifically the 2300 volt feeder system, did you note anything as to the condition of that wiring?

(Testimony of L. E. Kurtichanof.)

A. Yes, I did. The main bus structure and wiring contained therein was of the vintage of the date this plant was built, approximately 1907 or 1908, and was not in any way comparable to modern designs. In addition to that, some of it was installed later, I think for instance, like that to take care of the pump, the 2800 or 3000 gallon pump to serve the Brown Brothers farm, something of that nature, that was put up in a very temporary manner, and in my opinion constituted a real hazard. The wiring, together with associated cut-outs, which were bare, and exposed fuses and all that, was not good grade of construction.

Q. In the main, what was the age of the power plant, the generating equipment?

A. Well, the original plant was built in the period of 1901, so at the time that I observed it in '43 it was about 37 years of age, with the exceptions as noted in the case of water wheel under 2 and generator, unit 2.

Q. What did you fix as the cost of replacing the generating plant equipment, new?

A. My estimate of reproduction cost new as of September 30, 1943, for generating plant equipment was \$155,344.00.

Q. Now, from your examination, did you form an opinion as to the degree of depreciation that should be charged off against those installations?

A. I found the condition in per cent was 69.

Q. That would be a depreciation of 31 per cent?

A. Yes.

(Testimony of L. E. Kurtichanof.)

Q. And the reproduction cost less depreciation on the power plant equipment then would be what?

A. \$106,648.00.

Q. Now, passing on to the transmission line, I assume you handled that as a separate item?

A. I did, but in connection with the power plant there were some miscellaneous items.

Q. Not included in the total? [987]

A. Not included in the figure I gave you. That is merely power plant equipment. I set up my estimates in compliance with the uniform classification of accounts as prescribed by the regulatory commissions, including the Federal Power Commission.

Q. Are you getting into the matter of overhead, or what's also been referred to as—

A. No, but I merely point out that you were asking about the power plant equipment. I have some miscellaneous equipment, such as shop equipment and tools.

Q. Well, can you give us the total of this?

A. There are only four general items, shop equipment and tools, yard lighting system, domestic water supply system and irrigation system, a total estimated reproduction cost of \$7600.00, the depreciated value of \$1832.00.

Q. I assume you have added to all of your items the usual overhead item of legal and engineering and other incidental expenses? A. Yes.

Q. However, we'll pick that up when we include the various items. Now passing on to the transmis-

(Testimony of L. E. Kurtichanof.)

sion line, what did you find the condition of that line to be from your examination of it, Mr. Kurtichanof?

A. Well, it was in very poor condition.

Q. And in what way? [988]

A. It is composed, in most part, of the poles set originally. The poles were untreated cedar, which have been stubbed once, twice, in some cases three times. About two-thirds of the stubs are composed of old poles which had been cut up for stubs, and about one-third of the stubs at the time I observed them were of treated sawn timbers. I don't recollect exactly whether they were merely tank treated, or Pentrex treated, but they were treated in some manner.

Q. What percentage of the stubs had been treated, did you say?

A. About one-third of all the stubs.

Q. What about the other two-thirds?

A. They were untreated cedar poles, which had served as poles, had been taken out of service because of decay at the butt, then cut up into lengths for use of stubs, the remaining sound portion.

Q. Now, you examined the line itself?

A. Yes.

Q. And what did your examination of that show?

A. Well, it showed a, rather an ominous condition, if I might so express it. When it comes to reproducing an article such as the transmission line, here's what I found. The conductor size was not at all compatible with the amount of power that

(Testimony of L. E. Kurtichanof.)

it was required to deliver, [989] or could possibly deliver under the size generating plant existing. The explanation for it must lie in this fact, that at an earlier time, when it was being operated at 22,000 volts instead of 66,000, such cross section was required. Another thing was that it was made of a conductor, a type which is now long obsolete, namely soft aluminum, and I don't think any engineer designing a line to carry 2100 kilowatts, or the capacity of that plant, would use such a conductor for two reasons, first of all, because of its overadequacy in size, and second, because of its obsolete type, which is this, that the conductor strength is so low that it requires spacing of poles at very short intervals. With a modern type of conductor better suited to the duty required of it, one could reduce the cost very materially by reducing the numbers of poles, structures, insulators, and the like, to one half or less of the number which would be required to carry the existing line. I made a comparative estimate of what a modern type of line would cost. I took into consideration the salvage obtainable from salvaging, taking down and salvaging the present conductor, and from that, and taking into consideration all other factors, I determined that the per cent condition was, I believe, about 22—let's see, 23 per cent.

Q. What would be the type of conductor that would be used [990] at the present time, instead of the soft aluminum conductor?

(Testimony of L. E. Kurtichanof.)

A. Well, you would have a choice of a variety. You would have a choice of aluminum with a steel core, you would have a choice of hard copper, you would have a choice of copper weld, either solid or stranded, all of which have the necessary carrying characteristics with much higher breaking strength.

Q. What would be the cost of any of those conductors mentioned as compared with the cost of this soft aluminum conductor?

A. Well, a conductor of size adequate to perform the functions would be very materially less. I have estimates here somewhere, quotations from manufacturers.

Q. So, from your examination, you conclude that to a large degree this line is not only depreciated, but obsolete? A. Yes.

Q. In many characteristics? A. Yes.

Q. And your opinion of the actual condition of that line due to depreciation and the obsolete items mentioned is about 23 per cent of the actual replacement cost of it?

A. The depreciated value?

Q. Yes.

A. Is 23 per cent of an estimated cost new. [991]

Q. Now, what did you estimate to be the replacement cost new of the line? A. \$52,775.00.

Q. And the reproduction cost less depreciation value?

A. \$11,923.00. I wish to explain here, too, Mr. Ramsey, that the figures I have just quoted you are

(Testimony of L. E. Kurtichanof.)

for total transmission plant. Included in that, however, are the land and land rights associated with the transmission line.

Q. That is, the right of way?

A. For which the estimated reproduction cost, furnished me by the Army, is \$400.00; the per cent condition is 100 per cent, and the depreciated value is \$400.00.

Q. And that would be added to the figure?

A. Deducted from that total.

Q. It is included in the total given. Now, as a part of that line did you include the line from the junction down to the pumping plant?

A. Yes.

Q. That is for the entire transmission line?

A. For sixteen miles of line.

Q. Before we leave the transmission line, do you have—are you in agreement with the items testified to by Mr. Tinling that are required on each of the pole structures and the number of poles involved in the line itself? [992]

A. I do not have in mind all of his testimony, but one element that I would like to question is the poles themselves. I believe Mr. Tinling's testimony was that they were Pentrex treated cedar poles. At the time of my observation there were only about three or four Pentrex treated poles on the line. All the rest were untreated poles.

Q. And your investigation was made in August, 1943?

(Testimony of L. E. Kurtichanof.)

A. August and September of 1943. I can give you the exact number from my field sheets of the Pentrex treated poles that were in existence at the time of my observation.

Q. Well, perhaps you had better give us that.

A. There were two of 35 foot length, two of 45 foot length.

Mr. Powell: May we have that again, please?

A. Two of 35 foot length and two of 45 foot length, Pentrex treated cedar poles.

Q. Did you include in your reproduction cost here the cost of setting the poles?

A. Oh, yes.

Q. And back filling? A. Yes.

Q. In your examination of the pumping plant structure, Mr. Kurtichanof, did you have access to the original profile drawing of the Hanford Irrigation and Power Company for that structure, for purposes of comparison? [993]

A. Yes, there was a profile of the discharge line; I believe there were some planned and sectional elevations.

Q. Is this the bureau drawing that you refer to?

A. That is one showing a sectional elevation of the pumping plant.

Mr. Ramsey: I ask that this be marked as plaintiff's "N" for identification.

(Whereupon, drawing of cross section of pumping station was marked Plaintiff's Exhibit "N" for identification.)

(Testimony of L. E. Kurtichanof.)

Direct Examination
(Continued)

Q. I hand you plaintiff's identification "N", and ask you if that is one of the sectional drawings that you had access to for purposes of comparison?

A. It is.

Q. And do you know how you secured that?

A. Either directly from the district, or through the Army Engineers, who in turned obtained it from the district, it is my recollection.

Q. Did you from your comparison find that this sectional drawing was substantially correct as showing the structure as it now exists?

A. As far as the structure itself is concerned, yes, but in certain details of intake and discharge of the conduits it is not.

Q. As to the structure itself, however, it is substantially [994] correct?

A. That's right, in dimensions, thicknesses, heights, and so on.

Mr. Ramsey: We offer plaintiff's identification "N" in evidence.

The Court: Any objection?

Mr. Cheadle: No objection.

The Court: Admitted:

(Whereupon, Plaintiff's Exhibit "N" for identification was admitted in evidence.)

(Testimony of L. E. Kurtichanof.)

Direct Examination

(Continued)

Q. Did you also have available for your use a motor floor plan and transformer floor plan of the pump structure?

A. At least one, and possibly more.

(Whereupon, drawing of floor plan of pumping station was marked Plaintiff's Exhibit "O" for identification.)

Q. I hand you plaintiff's identification "O" and ask you if that is one of the floor plans that was available to you? A. It is.

Q. And that is from the same source as the other plans and drawings? A. It is.

Mr. Ramsey: We offer it in evidence.

Mr. Powell: No objection [995]

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "O" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. I hand you, Mr. Kurtichanof, four other plans or drawings and ask you to inspect them and state whether or not any of these were used by you for checking purposes, and the source of the same.

Mr. Powell: May I ask if counsel is going to have the witness explain all these drawings to the jury?

(Testimony of L. E. Kurtichanof.)

The Court: Well, I think he should look at them first and pick out which one you wanted marked.

A. This first drawing I am looking at is number 15997. It is the manufacturer's drawing of the number 3 pump. It is designated as a 36 inch centrifugal pump. It is only of interest in showing the detail of construction of the mechanical portions of the pump. Also the one you have in your hand there is also for the same reason. It is only for technical information, and not for particular use for anything else. This is a simple drawing of a section of one of the discharge pipes, leading from the pumping plant to the canal at the top of the hill. This is the 66 inch wood stave pipe.

Q. Now, what is this appearing in the lower left hand portion of the drawing? [996]

A. That is a profile of the ground between the pumping station and the canal, merely to illustrate the difference of elevation between the water surface in the river and the point of discharge of the pipe lines into the canal, to show the difference in the elevation.

Q. Do you know whether the elevation of the water surface as shown is the mean level, or what it might be?

A. No, I don't. It might be an arbitrary level assumed by the designer, but it shows the relative elevations between the two, the point of intake and the point of discharge. That will vary from year to year and from month to month, and I think it has

(Testimony of L. E. Kurtichanof.)

been testified before it varied within the limits of 40 to 65 feet, something of that nature.

Mr. Cheadle: Did the witness identify that one drawing as the one in accordance with which the wood stave pipe was built?

A. Well, I know that it is a wood stave pipe of that diameter.

The Court: Are either of you going to use any of these drawings, then?

Mr. Powell: They were identified.

The Court: They weren't identified, they were discussed here.

Mr. Ramsey: I don't believe any of them would be [997] of particular value except the one shown, and the witness was unable to state whether it was the mean level or not, and I considered it wasn't admissible.

The Court: It is also a different size. At any rate, if they're not going to be used, the jury will simply disregard this testimony. They were simply looking over the maps to see if they were going to use them. We'll adjourn until 10 o'clock tomorrow morning.

(Whereupon, the Court took a recess in this cause until Wednesday, February 19, 1947, at 10 o'clock a.m.) [998]

Yakima, Washington, February 19, 1947

10 o'Clock A. M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: I notice in the instructions requested by the defendant the court is requested to instruct the jury that one of the elements of value in a case of this character, along with reproduction cost new, reproduction cost new less depreciation, and so on, is the capitalized value of earnings, or capitalized earnings. I have taken the view in former cases of this kind that while earnings may be shown as having a bearing on market value, that capitalized earnings should not be permitted to be shown, directly, at any rate, and that they are not an element of value. The only authority I have been able to find on that is Orgel on Value in condemnation proceedings. Orgel takes the view that capitalized earnings—that the jury should not be instructed that they are an element of value. If counsel can show me any authority to the contrary, I will of course consider it, otherwise I will be inclined to instruct that only the earnings and [1001] income of property may be considered. One thing I thought I should mention now so that I shouldn't overlook it, I had in mind submitting to the jury the amended petition, which contains a description of the properties involved, but the clerk called my attention to

the fact that one sheet of the amended petition sets forth the amount of the government's deposit or estimated award of, what is it, \$170,000.00. I wonder if counsel will stipulate that that particular page may be removed from the amended petition when it is submitted to the jury? I think if you'll look at it you will see that it leaves the balance of it complete.

Mr. Cheadle: As I recall, that is paragraph 6, and it also sets forth the government's legal contention, I believe. We will so stipulate.

Mr. Ramsey: The government will so stipulate.

The Court: Let's have it definite which page I am referring to, so that the record may show it. That is page 9, paragraph 6, and it is just preceding the prayer, so that the amended petition is complete without it. It sets forth the allegation that the real and property interests set forth in paragraph 4 constituted all the operating properties and facilities of the Priest Rapids Irrigation District, and then recites that the government has acquired all of the beneficial ownership and interest [1002] in the property, and that the District now holds the legal title in trust for the use and benefit of the United States, that the sum of \$170,500.00 deposited in the registry of the Court represents to sum which, together with the bond redemption fund, is sufficient to discharge all indebtedness, and so forth. I think that page should be removed.

Mr. Cheadle: Is the Court agreeable to hearing defendant briefly on the first matter your Honor mentioned?

The Court: Yes.

Mr. Cheadle: In the *United States vs. Waterhouse*, 132 F. 2d, 699, Circuit Court of Appeals, Ninth Circuit, decided in 1943, involving a number of questions, one of them was the question of capitalization of earnings. I am reading a quotation now from page 703. The court ruled that:

“Capitalization of rental value is evidence of market value of the land.”

And the Court there quoted and relied on the Olson case. That Waterhouse case, your Honor, was affirmed by the Supreme Court by an equally divided court in a concurring opinion which merely announced the decision. I do not know whether this question, or other questions, or this and other questions, were presented in the Supreme Court. [1003]

The Court: What was the result in the Supreme Court?

Mr. Cheadle: The Ninth Circuit was affirmed by an equally divided Supreme Court, 4 to 4. Also another Ninth Circuit case, *Puget Sound Power and Light Company vs. Public Utility District Number 1*, 123 F. 2d 286, decided in 1941. Certiorari was denied in that case, 315 U. S. 814. I have this quotation from that case, which I think implies clearly that capitalization of earnings was a matter to be taken up by the jury. The issue on this point was whether various rates for capitalization to which there had been testimony by witnesses could be assumed by the jury, and at page 293 the Court said:

“The jury should not be permitted to assume an interest rate, but should determine a proper one under the evidence.”

It was on the basis of that case, your Honor, that in the same instruction I believe we included a proposed instruction that the jury itself should determine the rate of capitalization. I believe you Honor will find Puget Sound Power and Light vs. Puyallup, 51 F. 2d, 688, another Ninth Circuit case decided in 1931, to the same general effect.

Mr. Ramsey: May I point out to the Court that there is a very wide distinction between a case involving rentals and a case involving capitalized estimated net earnings. In the one case you have a fixed and certain return on the rental, from which may be deducted a fixed and certain tax rate, leaving the only item in suspension the maintenance of the rental property. The operation costs of the rental property are fixed and certain. In the instant case the net earnings is a matter that is very much a matter of opinion, and varies very, very widely, so your first calling on your jury to fix and determine what the net earnings of the property is, then the rate of capitalization of course is a matter to be determined by the jury, so you're asking the jury to go out first and from a maze of evidence varying very, very widely, to determine the net possible earnings under certain circumstances of the property, from which must be deducted certain other items which must then be fixed by the jury, and then capitalize on a rate to be determined by the jury, and I submit that we're out in the realm of speculation on every single item involved in a capitalization of net earnings. The jury must speculate on every single thing that is taken into considera-

tion in computing the value predicated upon the assumed net earnings of the property.

Mr. Cheadle: In brief reply, your Honor, I wish to point out that in the Waterhouse case, this recent Ninth Circuit case, the rental values which were being testified to by the experts on the side of the land owner, they were testifying to rental values of sugar caneland if it were subdivided. There was a substantial possibility that in the reasonably near future the sugar cane lands on the outskirts of Pearl Harbor could be subdivided and handled as residential property, consequently the situation was quite analogous to the case here, and quite the opposite from what counsel points out.

The Court: I will look at those cases. Bring in the jury.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

L. E. KURTICHANOF

a witness called on behalf of the Petitioner resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Ramsey:

Q. Mr. Kurtichanof, I think when we adjourned yesterday evening we had just gotten down to the pumping plant, and were about to take up the matter of the pumping plant itself. Are you in agreement with the other witnesses who have testified

(Testimony of L. E. Kurtichanof.)

here that the line running down from Coyote Junction to the pumping plant consisted [1006] of about 1.6 miles of line?

A. Yes, that is substantially correct.

Q. And that that 1.6 miles of line was in no important respect different from the balance of the 14.4 miles of transmission line?

A. It differed only in the small detail of construction of the pole top assembly. In other words, in this section of line from Coyote Junction to the pumping plant, use was made of single cross arms, and all of the high voltage conductors were mounted on one cross arm. Sometimes there were assemblies of two cross arms on account of railroad crossings.

Q. Are you in agreement with the other witnesses that in determining the value of this particular 1.6 miles of transmission line, that it would be fair to just simply take the percentage of the total value placed on the transmission line represented by the 1.6 miles as compared to the total of 16 miles of transmission line?

A. I think that would be eminently fair.

Q. Now, with reference to the plant itself, what total yardage of excavation was necessary for the construction of that plant, and what character of excavation?

A. I had several classifications of excavation, part of it in the pump house building, part in the intake tunnel, built in the river bed. In the pump plant building proper [1007] I had 1540 yards at 60 cents.

(Testimony of L. E. Kurtichanof.)

Q. At what?

A. 60 cents. It was all in gravel.

Q. Yes.

A. In the intake tunnel, which is a separate structure, of course, the excavation was also gravel, which I estimated at \$1.00 because of the need for underwatering.

Q. How many yards did you say you found, or did you say, of this excavation?

A. The intake tunnel, my estimate was 625 yards of excavation, 1174 yards of back fill on top of the timber tunnel. The excavation was priced at \$1.00 a yard, the back fill at 50 cents.

Q. Now, what was your total yardage, again, of the back fill? A. 1174.

Q. Giving a total of—what's the total? Did you total the total number of yards involved there?

A. No, I didn't, because I did not use it in that way. I did not require those prices in that way. I priced the main features of the project independently of each other. In other words, I had a total price for the pump intake tunnel and a total price for the pump building and the transformer house. The different elements in the pumping plant of pumps, piping, separate items, switch board, separate item, and transformers and so on, domestic water [1008] supply, separate item, waterways and conduits, in which I included the intake tunnel and the pump discharge lines.

Q. Now, did you find that any excavation had been necessary in the pump discharge lines?

A. Yes.

(Testimony of L. E. Kurtichanof.)

Q. Did you make that a separate item, or run it through with the——

A. Separate item.

Q. And how many yards of excavation did you find was involved in that?

A. For the 66 inch pipe line, I estimated the excavation in the amount of 2114 yards. For the 72 inch wood stave pipe line, I estimated excavation of the same.

Q. The two items were 2114 yards each?

A. Yes.

Q. And what did you estimate was the cost of that excavation?

A. The excavation was priced at 60 cents, and I had something for back fill too. I have the relative costs in this ratio; excavation, \$1268.00, and the back fill, \$258.00, for each of the pipe lines.

Q. Did you make an examination of those discharge pipes as to condition?

A. On the surface, yes, and where it was feasible, at the point of discharge into the canal. [1009]

Q. What did you find the condition of those pipes to be?

A. At the time of my examination there was evidence of very heavy leakage. Water was spouting from numerous holes to considerable height, and a great many leaks were observed the full length of the line.

(Whereupon, photo of part of pipe line at pumping station was marked Plaintiff's Exhibit "P" for identification.)

(Testimony of L. E. Kurtichanof.)

(Whereupon, photo of part of pipe line at pumping station was marked Plaintiff's Exhibit "Q" for identification.)

Mr. Powell: Your Honor please, I don't believe we should be charged with the condition of the system after Mr. Ramsey's client had been operating it for a full irrigation season. This was in October or September he saw it. They took it over in April.

Q. When did you see that, Mr. Kurtichanof?

A. The pumping plant was in operation at the time I viewed it; these pipe lines were in service at the time I viewed it.

The Court: What date was that?

A. August 30 is the date the official photographer for the Seattle District Office of the United States Engineer Corps took these photographs under my direction.

Mr. Ramsey: If counsel is correct that the government took over the operation of the plant on the 1st of [1010] April, then it actually had been operated by the government about four months, and I submit to the court—

The Court: Well, I think it is near enough so that it has some probative value. The time would be an element to be considered by the jury.

Direct Examination

(Continued)

Q. Now, Mr. Kurtichanof, at the time that you made your inspection of these properties, did you

(Testimony of L. E. Kurtichanof.)

take, or did you have taken under your direction, any photographs of structures and installations?

A. I did.

Q. I hand you plaintiff's Exhibits A, P and Q, and ask you to examine them and tell us what those are, if you know.

A. Exhibit A, is that the one?

Q. Yes.

A. That is the pump plant 72 inch wood stave pipe line.

Q. In place?

A. In place as on the date the photograph was taken, August 30. I have to refer to my identification sheets furnished me by the official photographer. It is a view, however, of the pump plant and an approach drive to the pump plant, to replace a fill which formerly exisited at that point.

Q. Is that identification P? A. Yes.

Q. And as a part of that photograph is any portion of the [1011] pipe line shown?

A. Just slightly, in the foreground, just ahead of the platform. Exhibit Q is another view of the pipe line, showing the extent of leakage at one particular point in the westerly pipe line.

Mr. Ramsey: We offer plaintiff's identifications A, P and Q in evidence.

Mr. Powell: Subject to the objection we made as to the nature of this whole testimony, we have no objections to the photographs.

The Court: All right, they will be admitted.

(Whereupon, Plaintiff's Exhibit "A" for identification was admitted in evidence.)

(Testimony of L. E. Kurtichanof.)

(Whereupon, Plaintiff's Exhibit "P" for identification was admitted in evidence.)

(Whereupon, Plaintiff's Exhibit "Q" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. You state, Mr. Kurtichanof, that you found these pipe lines leaking badly?

A. Yes, sir.

Q. And what condition of depreciation did you determine there had been upon these pipe lines?

A. After taking into consideration the salvage value of the bands and shoes, which might be used in replacement, I [1012] arrived at a percentage condition of 5 per cent.

Q. And what replacement cost did you place on the two pipe lines, the 66 and 72?

A. Estimated cost of reproduction as of September 30 was \$16,189.00.

Q. That is on the two pipe lines?

A. Both pipe lines, yes.

Q. And you gave them a depreciation of how much?

A. The per cent condition at 5 per cent, the depreciated value \$809.00.

Q. From your observation of the pipes and their condition in use there, Mr. Kurtichanof, how much longer would you have estimated, or did you estimate, those pipes could be used for the purpose they were being used for?

(Testimony of L. E. Kurtichanof.)

A. I figured they would not be of any service in the next irrigation season, possibly would not last during the remainder of the year had there been irrigation.

Q. Now, going on to the structure, then, from your inspection, observation and measurements of the plant there, what did you determine to be the yardage of concrete required to build the plant?

A. 900 cubic yards.

Q. And what was the nature of that concrete used there? Was it re-enforced, steel re-enforced, or otherwise?

A. I could not find evidence of re-enforcing except in [1013] structural shapes, under the floor supporting the motor and pump load. I assumed from the nature of the construction that there would be a wire mesh in the floor system. I searched for evidence of re-enforcing in the walls, but the walls were of very massive construction. On the occasion of one of my visits a crew of workmen were breaking a large hole out in the downstream wall of the pump house on the pump floor level. I took careful note of that concrete at that time, and it appeared to me that it was made of bank run aggregates; in other words, the sand and gravel were used as excavated out of the banks immediately adjacent to the plant. I saw presence of boulders in this wall. I measured one that was in excess of twelve inches in dimension. The wall at this elevation was about 28 inches in thickness. My conclusion was that it was rather doubtful that

(Testimony of L. E. Kurtichanof.)

there was any re-enforcing used in the walls. I allowed, however, for adequate re-enforcing in the roof slab and in the floor slabs, because it is my judgment that it should be there.

Q. And did you assume that it actually was there?

A. I did assume it, and I allowed quantities of re-enforcing steel and measured the structural steel which was in evidence.

Q. By structural steel do you mean such things as I-beams?

A. I-beams, and channels, and angles, which are used in the [1014] frame and for the floor.

Q. Now, Mr. Kurtichanof, what price did you fix per cubic yard on this concrete used in the construction of the building? A. \$16.30.

Q. What basis did you use in determining the per yard cost to be ascribed to the concrete used in the construction of the power house building and of the pumping plant building?

A. I don't get your question clearly, Mr. Ramsey.

Q. What was the basis upon which you determined the cost per yard of this concrete used in this building and in the power house building?

A. I obtained the market prices of cement delivered on the job, at the nearest railroad siding, estimated the cost of hauling, the cost of mixing, the cost of forms, and arrived at this figure.

Q. Now, did you have available any specific bid prices or actual cost prices on this sort of work?

(Testimony of L. E. Kurtichanof.)

A. Oh, yes. I had many of them. As a matter of fact, just about concurrently with this work, I had another hydro-electric project under construction on the Rogue River, approximately the same size and in many elements, very, very comparable.

Q. You had available the actual cost price of concrete of [1015] this character in the construction of this building? A. Yes, I had.

Q. Together with re-enforcing steels and the other elements that you have mentioned that would go into the construction of this building?

A. Yes.

Q. Now, in fixing your cost of excavation in this building and in the canal, power canal, and in the power house and the various other things that you've testified to, how did you arrive at the cost price per yard that you placed on the various material?

A. From my knowledge of similar work performed elsewhere.

Q. And how was that knowledge gained, Mr. Kurtichanof?

A. Well, partly from first-hand experience, partly from data that I have available in my office of unit prices bid on various types of construction jobs, and by comparing them with other jobs of comparable size and nature I can estimate fair prices for the particular job under consideration.

Q. Now, does the cost of excavation vary with the various materials which may be encountered?

(Testimony of L. E. Kurtichanof.)

A. Yes, with various materials, with various conditions affecting it, with the quantities involved, and other similar elements.

Q. You would expect a wide range of variation in the cost [1016] price of excavation between rock and dirt, or small gravel?

A. Ordinarily, yes, but I have seen many bids in which unit prices of rock and gravel or ordinary excavation, so termed, were bid in at the same price per unit.

Q. Well, the actual cost of that excavation would be a great deal different, wouldn't it, between rock and gravel or dirt?

A. Well, the bidders don't often go into very much detail when making their estimates. They base their judgment more on experience and an average cost over the job, rather than specific fine divisions between the various classifications.

Q. The point I'm making is this, Mr. Kurtichanof. Wouldn't the bidder, however, in making his bid per yard on a general average, take into consideration how much of it was rock and how much of it was other materials?

A. He should, yes. The practical man would.

Q. The actual cost of excavation does vary widely, does it not? A. Yes, it does.

Q. What condition generally did you find the pumping plant structure in?

A. I think fair, for its service to which it had been subjected; the normal wear and tear that might be expected [1017] of it. There had been

(Testimony of L. E. Kurtichanof.)

several breaks through the walls that were not originally designed there.

Q. You would say that it was in as good condition as might have been anticipated in view of the period of use to which it had been subjected, and the character of the use? A. Yes.

Q. Did you observe any structural weaknesses?

A. Not of serious consequence.

Q. Now, at the time that the jury was viewing these properties, Mr. Kurtichanof, they found, I believe, a fill in the front of this pump structure, nearly to the level of the entrance doors. Did that condition exist on September 1 of 1943?

A. There was no fill there. There was a temporary timber structure with a timber deck to give access to the pump plant at the front door level. This structure varied from about 4 to I would estimate 8 or 10 feet in height.

(Whereupon photo of rear of pump station was marked Plaintiff's Exhibit "R" for identification.)

(Whereupon, photo of front of pump station was marked Plaintiff's Exhibit "S" for identification.)

Mr. Ramsey: Never mind, Mr. Kurtichanof, we're not going to run back on the exact date these were taken. [1018] Counsel has indicated that they will not make any objection on that basis.

Mr. Powell: We won't object to the admission, your Honor. They can be marked admitted.

The Court: All right.

(Testimony of L. E. Kurtichanof.)

Direct Examination
(Continued)

Q. Handing you plaintiff's identifications "R" and "S", I'll ask you if those two photographs represent the condition that existed out there in August and September, 1943, as to fill or lack of fills in the immediate vicinity of the pumping plant?

A. This is exactly correct as I viewed it.

Mr. Ramsey: We offer identifications "R" and "S" in evidence.

Mr. Powell: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "R" for identification was admitted in evidence.)

(Whereupon, Plaintiff's Exhibit "S" for identification was admitted in evidence.)

Direct Examination
(Continued)

Q. Now, it has also been indicated, Mr. Kurtichanof, that certain changes have been made out there in the point at which the discharge pipe enters the canal between September 1, 1943, and the time it was viewed by the [1019] jury. I ask that this be marked as plaintiff's identification "T".

(Whereupon, photo of end of one discharge pipe was marked Plaintiff's Exhibit "T" for identification.)

(Testimony of L. E. Kurtichanof.)

Q. I hand you, Mr. Kurtichanof, Plaintiff's Exhibit "T", and ask you if that photograph is a fair representation of the condition that existed at the point of junction of the pipe lines with the canal on September 1, 1943?

A. Yes, this shows an elevated water tank over the point of the canal where one of the pipe lines discharges into the canal.

Mr. Ramsey: We ask that plaintiff's identification "T" be admitted in evidence. We offer it in evidence.

Mr. Powell: I would prefer that they be offered together, if your Honor please. Identification "T" does not show the same condition that was seen by the jury, and I think if there is a photograph that shows a relatively same condition as they viewed it, they should see that too.

A. Well, they couldn't help but see that.

Mr. Powell: Yes, they saw that.

Mr. Ramsey: There apparently is no additional copy of that photograph.

Witness: Take it out of your copy of the report, [1020] page 46.

Mr. Ramsey: I ask that this be marked as plaintiff's identification "U".

(Whereupon, photo showing end of discharge pipes was marked Plaintiff's Exhibit "U" for identification.)

(Testimony of L. E. Kurtichanof.)

Direct Examination
(Continued)

Q. I hand you plaintiff's identification "U", Mr. Kurtichanof, and ask you what that is, first.

A. This is a photograph or a view looking towards the discharge end of the pipe line serving this canal. It is to be noted that the pipe lines come by separate routes, about 30 feet apart, and they discharge into this transition portion of the canal and ultimately it is made one channel.

Mr. Ramsey: I offer plaintiff's identifications "T" and "U" in evidence.

Mr. Powell: No objection.

The Court: Admitted:

(Whereupon Plaintiff's Exhibit "T" for identification was admitted in evidence.)

(Whereupon, Plaintiff's Exhibit "U" for identification was admitted in evidence.)

Mr. Ramsey: I ask that this be marked as plaintiff's identification "V". [1021]

(Whereupon, photo of intake pipes at pump station was marked Plaintiff's Exhibit "V" for identification.)

Direct Examination
(Continued)

Q. Mr. Kurtichanof, in your examination of the pumping plant did you also make an inspection of the intake pipes?

A. Yes, insofar as they were feasible.

(Testimony of L. E. Kurtichanof.)

Q. Was there a photograph taken of those at the time of your inspection?

A. At one period of my inspection, yes, when the river level had fallen to a point where these pipes were capable of being photographed.

Q. I hand you plaintiff's Exhibit "V" and ask you to identify that.

A. This is a photograph of the two 42 inch suction lines from the pumps to the intake tunnel. The view is taken looking straight down from a window at the level of the operating floor.

Mr. Powell: May I inquire just a moment? The dark place in the picture is the shadow of the building?

A. Shadow of the building, yes.

Mr. Powell: What is the instrument or thing at the right?

A. This is a small pipe, about 2 inches in diameter, used for pump suction of the small pump supplying domestic [1022] water.

Mr. Powell: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "V" for identification was admitted in evidence.)

Direct Examination

(Continued)

Q. Now, Mr. Kurtichanof, did you inspect the installation of the machinery in the pumping plant?

A. Yes, I did.

(Testimony of L. E. Kurtichanof.)

Q. You have heard the testimony of the District's witnesses as to the items of installation and equipment to be found that was present in the pumping plant at the time it was taken over by the government, I think on April 1, 1943?

A. I heard the testimony.

Q. Did your inspection of the installations and equipment, machinery, in the plant differ materially from the tabulation that was made by the witnesses for the District?

A. Not as I recall the testimony.

Q. How many pumps did you find in the pumping plant utilized for pumping water to the irrigation district from the pumping plant, or to the irrigation canal?

A. Really, four. Two with a rating of 28,800 gallons per minute each, against 35 foot head; one rated 31,500 [1023] gallons per minute at 60 foot head, and one rated 3000 gallons per minute at 60 foot head.

Q. That pump rated 3000 gallons per minute at a 60 foot head, was that connected up with the pipe lines leading to the canal, or was it used for another purpose?

A. It was a very peculiar connection. The two large pumps rated at 28,000 gallons each were connected in series, and this 3000 gallon pump was tapped off of that series between the two main pumps.

Q. I'm not sure that I got that.

A. If you can visualize the two large pumps

(Testimony of L. E. Kurtichanof.)

connected in series through, we'll say, approximately 30 foot length of 30 inch pipe, and somewhere in that 30 inch pipe you take a tap off to serve as a suction for the 3000 gallon pump, and it in turn then discharges into the same 66 inch wood stave line as the two main pumps connected in series.

Q. It was actually connected with the two pumps in series?

A. Well, now, the water pumped by this small pump discharged into the wood stave pipe directly?

A. Yes, but the suction of this pump would be drawn through the impeller of one of the big pumps, which was between it and the suction well. [1024]

Q. Now, it was connected between the two big pumps connected in series? A. Yes, sir.

Q. So any water which it would have pumped would have been a part of the water which was being sucked up by the first big pump?

A. Well, if the two big pumps were running. I believe the purpose was to be able to supply small quantities of water when it was not required to run the big pumps. That way it would have to suck through one of the large pumps, which would have to be tied in place to keep it from rotating, and then discharged through a by-pass around the second of the two large pumps directly into the 66 inch line.

Q. Well, was that an efficient connection?

A. No, I think it was a very poor connection from an engineering standpoint.

(Testimony of L. E. Kurtichanof.)

Q. Now, as to the two big pumps connected in series, I believe you said those two pumps were rated on a 36 foot head, is that correct?

A. I have it 35.

Q. 35 foot head; was the utilization of those two pumps in series efficient?

A. It is not.

Q. And why not? [1025]

A. Because of the very reduced efficiency, and primarily extravagance in original cost.

Q. What about cost of operation?

A. Cost of operation would be very materially increased over that of a unit which was especially adapted for the head involved.

Q. What size motors were utilized to run each of these two pumps connected in series?

A. The two pumps rated at 28,000 gallons each were driven by motors of rating of 450 horsepower.

Q. What sized motor would be required to operate a pump rated at 28,000 gallons on a 65 or 66 foot head?

A. Well, a direct comparison might be found in this particular plant. The other pump, large pump, rated at 31,000 gallons at 60 foot head, is driven by a motor of 675 horsepower rating, and I have a quotation from the manufacturer of the original pumps to deliver the same quantity of water as their rating to a 60 foot head with a 600 horsepower motor.

Q. So that actually in the operation of the two pumps connected in series you were utilizing 900 horsepower in the motors to deliver the same water

(Testimony of L. E. Kurtichanof.)

that could have been delivered with a 600 horsepower motor on a single pump designed for a 60 foot lift? A. That's right. [1026]

Q. The cost of operation of the two 450 horsepower motors would be—would it be any greater, or materially greater, than the cost of operation of a single 600 horsepower motor?

A. It would be 50 per cent greater.

Q. Is the cost price of the two pumps connected there in series greater than the cost price of a single pump with a 28,000 gallon rating, at 65 feet head?

A. The combined cost of the two pumps is nearly double that of the cost of a modern pump, or it is nearly double that of the cost of the number 3 pump, which is designed for 60 foot head and a slightly greater delivery.

Q. Does that condition represent any degree of obsolescence in equipment or utilization of equipment? A. In my estimation it does.

Q. Now, with reference to depreciation, did you make any determination of how long these various pumps had been in service, and motors?

A. Yes, I have.

Q. And in the main, how long had most of those things been in service there in the pump house?

A. Well, the two which are connected in series have been in since about 1907. The number 3 pump, the 36 inch I. P. Morris pump, was installed in 1912.

Q. Did you observe any other installations there that were [1027] obsolete for any reason?

(Testimony of L. E. Kurtichanof.)

A. In the matter of equipment, practically every other auxiliary piece of apparatus associated with the main equipment would be in the same classification as the main part of the equipment.

Q. And what degree of depreciation and obsolescence did you determine existed with reference to the equipment and installations in the pump house there?

A. Well, obsolescence in my conception is a part of depreciation. It is one element of depreciation. Taking into consideration all elements of depreciation, I have found a per cent condition for the two old pumps to be 20 per cent; for the 36 inch pump, 51 per cent; for the 3000 gallon pump, 51 per cent, and for miscellaneous small pumps, such as the vacuum pump, lubricating pump, sump pumps, and so on, 51 per cent; the piping, 69 per cent. The piping includes all of the piping and valves; there's some very expensive valves in there, 30 and 36 inch in size. The switch board was in 51 per cent condition, transformer 51 per cent; spare set of windings for the transformer, 100 per cent condition; domestic water supply system, 36 per cent conditions; water-ways and conduits 69 per cent; pump discharge lines, 5 per cent; yard lighting is 47 per cent; shop equipment and tools, 40 per cent; total pumping plant, the composite of all these, is 42 per [1028] cent condition.

Q. And what depreciation did you determine there was upon the structures?

(Testimony of L. E. Kurtichanof.)

A. In my account structures, I have included pump house, operator's cottage, bunk house, blacksmith shop, and transformer house. For the pump house I have assigned a per cent condition of 83. The operator's cottage, 25; bunkhouse, 22; blacksmith shop, 22; transformer house, 39; and composite of all structures, 73.

The Court: We'll take a ten minute recess now.

(Short Recess)

(All parties present as before, and the trial was resumed.)

Direct Examination

(Continued.)

By Mr. Ramsey:

Q. Mr. Kurtichanof, what figure did you arrive at as the replacement cost of the pumping plant?

A. \$146,622.00.

Q. Now, that includes the pumping plant structure? A. Yes.

Q. The installations?

A. Total pumping plant. It includes structures, and the equipment, water-ways, discharge lines, and all auxiliary equipment.

Q. And what did you determine to be the depreciated value of [1029] that plant?

A. The per cent condition was 42; the depreciated value was \$62,788.00.

Q. Now, going back for a moment to the transmission line, how much of an inspection did you make of that transmission line?

(Testimony of L. E. Kurtichanof.)

A. I inspected every pole, with the exception of perhaps three or four structures which are located high up on a rocky bluff between Midway and Priest Rapids. There might have been only two. I missed two H-frame structures that I did not climb up to the structure.

Q. You made a pole-by-pole inspection?

A. Pole-by-pole inspection, and looked at each number appearing on the pole, together with all appurtenances on the pole.

Q. Did you take any photographs during that inspection of unusual or typical pole structures or stretches of the line?

A. I had several photographs taken, some of typical construction such as represented in the one and a half mile section between Coyote Junction and the pumping plant, which I had referred to before as representing a flat configuration of the construction, also of the remaining fourteen and a half mile construction at Coyote Junction, representing the triangular type of construction, [1030] also of a number of difficult structures located in difficult locations, as well as terminal structures at both ends of the line.

Mr. Ramsey: I ask that these be marked as plaintiff's exhibits "W" and "X" for identification.

(Whereupon, photo of one pole on power line was marked Plaintiff's Exhibit "W" for identification.)

(Testimony of L. E. Kurtichanof.)

(Whereupon, photo of one pole on power line was marked Plaintiff's Exhibit "X" for identification.)

Direct Examination

(Continued.)

Q. I hand you, Mr. Kurtichanof, plaintiff's identification "W", and ask you what that is?

A. That represents a structure, I believe about the first one leaving the tangent line going north, or in a northerly direction, some point north of Midway Station, where it began entering the difficult type of construction. In the background is seen an H-frame type of construction, high up on the rocky bluff.

Q. Is that H-frame type of construction part of this line? A. It is.

Q. And what is shown otherwise by the photograph?

A. Well, it shows an angle in alignment of the line, and a type of bracing to support a pole. In this particular case, instead of using a guy [1031] on the opposite side of the strain, a push brace, consisting of a pole, is used.

Q. I hand you plaintiff's identification "X", and ask you what that is?

A. This shows an individual pole located high up on an almost perpendicular bluff, very difficult of access. The figure in the foreground is myself, and by looking closely to my right you can see a

(Testimony of L. E. Kurtichanof.)

wire rope ladder which is anchored in the rock to give access to the base of this pole.

Q. Does that represent a section of the more or most difficult construction that there is on the line? A. The most difficult.

Mr. Ramsey: We offer plaintiff's Exhibits "W" and "X".

Mr. Powell: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "W" for identification was admitted as evidence.)

(Whereupon, Plaintiff's Exhibit "X" for identification was admitted as evidence.)

Direct Examination

(Continued.)

Q. Now, Mr. Kurtichanof, as a part of your examination and inspection of the power plant itself, were any photographs taken? A. Yes.

Mr. Ramsey: I ask [1032] that these be marked as plaintiff's "Y" and "Z" for identification.

(Whereupon, photo of upstream side of power plant was marked Plaintiff's Exhibit "Y" for identification.)

(Whereupon, photo of downstream side of power plant was marked Plaintiff's Exhibit "Z" for identification.)

(Testimony of L. E. Kurtichanof.)

Direct Examination

(Continued.)

Q. I hand you plaintiff's identifications "Y" and "Z", and ask you what they are?

A. Exhibit "Y" is one view of the front of the power plant, and on the upstream side. Exhibit "Z" shows a view of the downstream side of the power house, the tail race structure, and piers.

Mr. Ramsey: We offer plaintiff's Exhibits "Y" and "Z" in evidence.

Mr. Powell: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit "Y" for identification was admitted in evidence.)

(Whereupon, Plaintiff's Exhibit "Z" for identification was admitted in evidence.)

Direct Examination

(Continued.)

Q. Now, Mr. Kurtichanof, what was the total depreciated value, or rather, what was the replacement cost less [1033] depreciation value fixed by you upon the power canal, the power plant, and the transmission line to Coyote Junction, that would be the first 14.4 miles of the line?

A. I did not price the division of the transmission line as you have indicated. I priced the entire line, but in my previous testimony I had made the statement that it was a fair assumption

(Testimony of L. E. Kurtichanof.)

that that portion of the line running from Coyote Junction to the pumping plant, comprising about 1.6 miles, the value of that section would be about 10 per cent of the total value of the transmission line.

Q. Are you able to give us the combined figures, then, of the items I have mentioned, as to reproduction cost less depreciation.

A. Yes. Reproduction cost new—I will first give you the summary of the principal items. Intangible plant, \$53,700.00; hydro-electric power plant, \$407,031.00; transmission plant, \$52,775.00; pumping plant, \$146,622.00.

The Court: Was the pumping plant included in your question, Mr. Ramsey?

Q. No, it wasn't. I'm only concerned now in the values as to the power canal, the power plant, and the first 14.4 miles of the transmission line.

A. I will have to make that quick computation here, Mr. Ramsey, to get that.

Q. Yes. [1034]

A. Estimated reproduction cost new of the hydro-electric power plant and of 14.5 miles of the transmission line allocated on the basis which was just mentioned, is \$454,528.00.

The Court: I assume that does not include the power canal. A. It does.

The Court: It does include it? A. Yes, sir.

Q. 454—what was the balance of that?

A. \$454,528.00.

(Testimony of L. E. Kurtichanof.)

Q. Now, that is your replacement cost new of the power canal, the power plant, and the first 14.4 miles, or down to Coyote Junction, of the transmission line? A. That's right.

Q. Now, what is your depreciated value, or your replacement cost less depreciation value, on those same items?

A. In arriving at these totals I had to get the composite weighted average, so the per cent condition, the weighted average per cent condition, of the hydro-electric power plant, is 69.37, which would be applied to the figure of \$407,031.00, and for the transmission plant, the per cent condition is 22.59, applied to \$47,497.00.

Q. Now, let's get those per cents of depreciation totals again. [1035]

A. For the hydro-electric power plant, the per cent condition, 69.37.

Q. Yes.

A. The transmission plant, the per cent condition is 22.59.

Q. Well, now, can you give us the totals of those?

A. I did not have it prepared in that manner, Mr. Ramsey, so I would have to go through the computations to give you the figures.

Q. Well, will you make up that computation so we may have the figures?

A. O.K. For the power plant that would result in a depreciated value of \$282,357.00; for the trans-

(Testimony of L. E. Kurtichanof.)

mission plant, it would be \$10,730.00, making a total of \$293,087.00, if my computations have been correct.

Q. Now, as a part of your efforts to arrive at the fair value of this property did you take into consideration the past earning records and past production records of the property? A. I did.

Q. And for that purpose what records did you have access to?

A. I had records made accessible to me at the irrigation district's offices at the power plant, and at the pumping plant; also in consolidated form, which were more convenient for my use, I obtained them from the Pacific Power and Light Company.

Q. Those were [1036] the records of the actual power generated at the plant?

A. The operations of the plant for the years 1932 to 1942 inclusive, and the first 10 months of 1943. However, in my computations I did not use the figures for 1943; I used just eleven full years of operation.

Q. Did you also have available to you the records of the earnings or the sales of power during that period of time by the District?

A. I had a record of billings for energy sold to the Pacific Power and Light Company.

Q. Now, Mr. Kurtichanof, state whether under your direction there was a tabulation of output of power from the plant for those years, by years, total amount of power sold to the Pacific Power and Light Company, by years, for the years indi-

(Testimony of L. E. Kurtichanof.)

ated, that is, '32 to '42 inclusive, the amount of power used by the District, together with allowance made for line loss, and the net of the self-consumed power used, and the revenues from the sales of power, each of those items being by year for each year from 1932 to 1942 inclusive?

A. I had such information available by months, and from this data I had it compiled in the manner that you suggested, or that you just asked me about.

Mr. Ramsey: I ask that this be marked as Plaintiff's [1037] identification A-1.

(Whereupon, tabulation of power produced and disposition thereof from 1932 to 1942, inclusive, was marked Plaintiff's Exhibit A-1 for identification.)

Q. I hand you plaintiff's Exhibit A-1, Mr. Kurtichanof, and ask you if that is the compilation that you have just testified to?

A. Yes. This is a summary by years, taken from my original data obtained, which represented the performance by months for each of the years indicated.

Mr. Ramsey: We offer identification A-1 in evidence.

Mr. Powell: May we have just a moment?

The Court: Yes. Do you have a copy of it?

Mr. Powell: Yes.

Mr. Ramsey: We ask that a copy of the exhibit be handed to each of the jurors.

(Testimony of L. E. Kurtichanof.)

The Court: Yes, that may be done if it is admitted.

Mr. Powell: If your Honor please, we object to the admission of the identification for the reason that the computation shows the matters pertaining to the operation of the power plant prior to the time when the improvements were made and the condition was changed to the [1038] condition in which the government took the property in October, 1943, there being a new improvement in the canal and a new generator installed in 1941.

The Court: Overruled. It will be admitted.

(Whereupon, Plaintiff's Exhibit "A-1" for identification was admitted as evidence.)

(Whereupon, the clerk distributed copies of Plaintiff's Exhibit A-1 to the jury and one alternate juror.)

Direct Examination

(Continued.)

Q. Now, Mr. Kurtichanof, referring to Exhibit A-1, in the first column appears the numbers 1932, 1933, 1934, and so on, down to and inclusive of 1942. To what does that refer?

A. That represents a tabulation of the total production.

Q. No, I mean just this one column.

A. Oh, the successive years for which this data is shown.

(Testimony of L. E. Kurtichanof.)

Q. Now, in column 2, headed "Total output, KWH" appears certain figures opposite each of the numbers which you have testified is the year; now, what does that represent?

A. That represents the kilowatt hour production at the power plant for the year opposite which the figures stand.

Q. Now, in column 3, under the heading "Sold to P. P. & L. Company after losses" what does that column represent?

A. That represents the net kilowatt hours for which bills [1039] were rendered to the Pacific Power and Light Company after deducting 5 per cent for losses as provided in the contract.

Q. Then "Own use and losses" what does that column represent?

A. That represents the difference between the amount produced and the amount sold.

Q. And the next column "5 per cent allowance to P. P. & L. for loss"?

A. That is a computation of 5 per cent on the actual amount sold. In other words, the kilowatt hours sold in the second column must be divided by 105 in order to determine the kilowatt hours allocated to losses.

Q. Then the column next appearing is "Net Self Consumed". What does that column represent?

A. That represents the kilowatt hours generated, less kilowatt hours sold and less allowance for losses.

(Testimony of L. E. Kurtichanof.)

Q. And in the last column "Revenues from Sales to P. P. & L. Company"?

A. Those are the summary of all bills rendered in that year for power sold to the Pacific Power and Light Company.

Q. Now, in the 10 or 11 year period appearing in that tabulation, in what year was the greatest amount of revenue realized, and the greatest amount of power generated at the plant?

A. In the year 1942. [1040]

Q. And how many years was that plant under District operation?

A. I don't remember the exact date. I believe it was in '31 or '32 when the District started operating. However, this contract for the sale of power to the P. P. & L. was first made in 1932 for the period of ten years, and revised in 1940 for an additional twenty years.

Q. And was there any complete records available to you prior to the year 1932 as to the generation of power at the plant, or any of these other items?

A. I did not find any. There might have been some around, but the records of the District were more or less scattered. Some were maintained, as I said, at the pumping plant, some at the power house, and some at the office in White Bluffs, and it was quite a difficult job to assemble them all and study them all to get them into the shape that I have them here.

(Testimony of L. E. Kurtichanof.)

Q. Mr. Kurtichanof, does your tabulation include all of the years for which you were able to find complete records up to and including 1942?

A. My information was from the beginning of 1932 to and including October, 1943.

Q. You have not included in this tabulation, however——

A. I have not included anything for 1943, because the year was incomplete. [1041]

Q. Thank you. Now, you stated a moment ago, Mr. Kurtichanof, that you made a tabulation by month of all of the power generated by the power plant, at Priest Rapids Irrigation District Power Plant, from 1932 to and inclusive 1943?

A. That is right, including a portion of 1943.

Q. Oh, yes, to and including 1942.

Mr. Powell: Is that '32 through '43?

Q. '32 through '42. State whether or not a compilation and summary of the generation of power at the plant for the period indicated, that is, from the beginning of 1932 to and including 1942, by months, was made under your direction? A. Yes.

Mr. Ramsey: We ask that this be marked as plaintiff's Exhibit A-2.

(Whereupon, tabulation showing K.W.H. produced by months 1932 through October, 1943, was marked Plaintiff's Exhibit "A-2" for identification.)

Q. I hand you plaintiff's Exhibit A-2, and ask you if that is the compilation that you have just testified to? A. Yes, it is.

(Testimony of L. E. Kurtichanof.)

Mr. Ramsey: We offer Plaintiff's Exhibit A-2 in evidence.

Mr. Powell: May I examine the witness shortly, your Honor? [1042]

The Court: All right.

Voir Dire Examination

By Mr. Powell:

Q. Where did you get the figures to make the compilation, Mr. Kurtichanof?

A. From the Pacific Power and Light Company, the original figures together with the billings.

Q. In what office.

A. At the office of the general superintendent, Mr. H. H. Schoonfield.

Q. In Portland, Oregon?

A. In Portland, Oregon.

A. And did that appear to be original records, from which you took these records?

A. I did not take them; I asked them to prepare them for me.

Q. Then the Pacific Power and Light Company prepared these records for you?

A. Yes, basically.

Q. Have you checked them with the daily log sheets here in evidence?

A. I checked them to some extent, but as I said before the records of the District were rather difficult to obtain. They were widely scattered, some sheets missing, and so on, and I was further informed when making my inquiries, particularly at

(Testimony of L. E. Kurtichanof.)

the power plant, that all the pertinent data that they recorded was in turn transmitted [1043] to the load dispatcher of the Pacific Power and Light Company and recorded there as well, and it was suggested by Mr. Grell that their records would be more complete than those of the District itself.

Mr. Powell: Has this been offered?

Mr. Ramsey: Yes.

Mr. Powell: The same objection we made on the other exhibit, your Honor, that it shows the records of the plant that wasn't the same as the government took.

The Court: Overruled. It will be admitted.

(Whereupon, Plaintiff's Exhibit "A-2" for identification was admitted in evidence.)

Mr. Ramsey: I ask that copies of the exhibit be distributed to the jury.

The Court: All right, that may be done.

(Whereupon, the clerk distributed copies of Plaintiff's Exhibit "A-2" to the jury and one alternate juror.)

Direct Examination

(Continued.)

By Mr. Ramsey:

Q. Now, Mr. Kurtichanof, I note that in Exhibit A-2 appears the number "1932" and under that—that is at the extreme upper left hand corner of the page — under that, "January" "February" "March" "April" "May" and through December,

(Testimony of L. E. Kurtichanof.)

followed by certain figures, and then finally "Total" followed by a figure. Will you just explain what that [1044] represents?

A. It represents the kilowatt hours produced each month.

Q. During the year what?

A. During the year of '32, '33, and so on, as shown on this sheet, and at the bottom of that tabulation would be the total production for that year.

Q. For that total year? A. Yes.

Q. Now, I note that following January, under '32, appears the figure what?

A. Zero, indicating that the power plant was not operated, did not produce.

Q. There was no production of power for that month?

A. For January, February, November, and December of that year.

Q. Under 1933 there are two months, January and February? A. That is right.

Q. Followed by zeros, that indicates the same thing. In 1934 the zero follows only the month of March? A. That is right.

Q. In '35 only the month of December?

A. That is right.

Q. In '36 the months of January, February, March, November, and December are followed by zeros? A. Right. [1045]

Q. In '37 the months of January, February, and March are followed by zeros?

A. That is right.

(Testimony of L. E. Kurtichanof.)

Q. In '38 the months of January, February and March? A. Right.

Q. In '39 the months of January and February? A. Right.

Q. In '40 the month of February?

A. And December.

Q. And December. In '41, the months of January, February and March show as zero?

A. That's right.

Q. And in 1942 there are no months where there was no production of power?

A. That is right.

Q. Under the 1943 column appears figures for January, February, March, April, May, June, July, August, September, and October, but no figures for November or December, and no total for the year?

A. That is right.

Q. Why is that?

A. Why? Because the operation was then in the hands of the government.

Q. That is because of the fact that the government took over the operation of the plant on October 1, '42? A. On October 1. [1046]

Q. And for the same reason you did not total the output for the year?

A. Not only that, but the figures were not available at the time I prepared my record.

Q. Yes. Now, in determining the fair value of the properties which I have indicated, that is, the power plant, canal, and the portion of the trans-

(Testimony of L. E. Kurtichanof.)

mission line to Coyote Junction, did you have in mind the earning record and earning capacity of that plant?

A. The earning value is one measure that I used to determine the fair value of the property.

Q. Is reproduction cost less depreciation another approach? A. It is.

Q. And in fixing the fair value of that property, did you have in mind one or all of the elements which you have testified that you were able to find data on?

A. All of the elements to which I have previously testified.

Q. Now, Mr. Kurtichanof, don't answer this question until counsel has had an opportunity to object. In the light of your investigation along the various lines that you have testified to, and considering the fair value of the property as being the sum in cash that would probably be agreed upon between a willing seller, willing but not compelled to sell, and a willing buyer, willing but not [1047] compelled to buy, what, in your opinion, was the fair value of the power plant of the Priest Rapids Irrigation District, together with the power canal and the transmission line from the plant to Coyote Junction, on September 30, 1943, with the obligation and duty imposed upon the plant of supplying to the Priest Rapids Irrigation District power for the pumping of water for the irrigation of lands in the district, not only those lands under irrigation on that date, but those lands which in the contemplation of a

(Testimony of L. E. Kurtichanof.)

reasonable person might be expected to make demand for water for irrigation within the reasonably foreseeable future?

Mr. Powell: We object, your Honor please, as not being a proper measure of value. The petitioner here taking the property has the fee simple title, which is the interests of all kinds in the property subject to private ownership, and not subject to any encumbrance. The petition so alleges, and we understand that is what the government is doing. The question pre-supposes a burden on the property which your Honor has from a legal standpoint disposed of otherwise.

The Court: I will excuse the jury until 1:30.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.) [1048]

Mr. Ramsey: I submit to the Court that any sale of this property that can be in contemplation of this jury or of the Court is a sale as between private parties in the condition of the property as it was on the date of taking. On that date any person or any corporation or any firm desiring to purchase the power facilities, generating and transmission facilities, of the Priest Rapids Irrigation District necessarily would and could only have purchased subject to the burden imposed upon the power generation and transmission facilities to furnish water for irrigation, or furnish power for operation of pumps to supply water for irrigation to

(Testimony of L. E. Kurtichanof.)

the Distict. Now, that point has already been determined by other courts. It is *res adjudicata*. It is established firmly by the decision of the Supreme Court of this State, I believe, as well as the Circuit Court of Appeals for the Ninth Circuit, that that burden and that duty is imposed upon those facilities in perpetuity. Certainly any purchaser could only buy what the seller has to sell. In this instance it is the property, but it is the property with the burden and obligation imposed upon it that it has already been determined by the courts cannot be shaken off, and in prior suits that very issue was presented, as to whether it could be taken or sold free of the obligation [1049] and duty to the land. Now, I respectfully submit to this court that there can't be any other approach in this matter.

We might say, well, we can assume that a certain per cent of the generating and transmitting facilities of that plant will be required for the irrigation of the property, and we can then fix the value of the property freed of all obligation, and say, well, 30 per cent of that has been and will be required for irrigation, and therefore 70 per cent of the value of the property freed of all obligation is a fair measure. I submit to the Court you might just as well say that if you were selling an apartment house over here where there is a 99 year lease, paid up, on two-thirds of the building, that you could use the same approach, that is, that the buyer will say "Well, certainly I'm charged with the obligation and the duty of maintaining the property, of paying the taxes on the property, of supplying janitor

(Testimony of L. E. Kurtichanof.)

service, of supplying elevator service, and I can only get the rents from one-third of the property, and therefore we will determine what I shall pay on the basis of it is worth so much, I'll pay one-third of that''; and I submit that with the burdens imposed upon that property, that any purchaser that would pay one dime, or take it as a gift, would be a very poor business man, and the same thing applies here.

The Court: I tried to make it clear at the outset the theory that the court was going to adopt in this case. I can't blame both sides for trying to talk the court out of it, but this lawsuit must end sometime, and I have to stick by that theory. It is too late to abandon it now, and the theory the court is trying to adopt was applied by my predecessor, and he indicated that he would apply it in this case. He applied it to the individual tracts, and that was what we're trying to do here, is to give the District compensation so far as this case is concerned for that part of its property not devoted to irrigation use. Now, it is my theory that the only way to arrive at that is to instruct the jury they must find the values of the property and then segregate them between irrigation and non-irrigation purposes as they existed at the time of the taking, or under the normal conditions would have existed in the reasonably foreseeable future. In arriving at the amount that should be allowed for irrigation and non-irrigation, of course the irrigation plant itself naturally falls into one category; we have the pumping plant, the main canals and laterals; they clearly are irriga-

(Testimony of L. E. Kurtichanof.)

tion properties within the so-called Schwellenbach theory. There is one relatively small piece of property that falls clearly within the other category, wholly of non-irrigation use, [1051] and that is the 80 acres that was testified to. It was testified that it could be devoted for farm uses. It is not needed in connection with the power canal, and not used in connection with the power plant at all, and therefore would fall clearly within the other category.

Then we have the power plant; the power plant itself, the power intake canal, with allied facilities, such as residences of workers and all that, and that part of the transmission line from the plant down to Coyote Junction. That is what presents the real difficulty in this case, because that is used, or was used at the time of taking, partly for irrigation and partly for the sale of power, and applying the theory the court has adopted, the jury must be instructed to segregate the value of that property and allocate it between power and non-power purposes, and it seems to me that the part that is to be allocated to non-irrigation purposes, purposes other than irrigation, is the very value that counsel seeks to bring out here in the question just propounded to this witness, that is, what is the value of this part of the plant, and its output and earning power over and above the duty imposed upon it to pump water to the lands of the District, and that would be imposed in the reasonably foreseeable future under normal conditions at the time of taking, so that the court is presented with this problem: [1052] If this witness is permitted to answer and fix as the value

(Testimony of L. E. Kurtichanof.)

of this property its value with the burden of furnishing water, pumping water, to the District's land, then how is any segregation to be made based upon that value, unless we definitely charge off the burden upon this plant for furnishing irrigation water? In other words, if the witness fixes the value with the burden upon it, and then we ask the jury to segregate, we would be segregating or asking the jury to segregate what is already what I would regard as the value of the plant for other than irrigation purposes, so that I wouldn't have any objection to his answering if that is to be the value submitted to the jury for non-irrigation purposes, but that, it seems to me, is what it is under the theory the court is trying to apply here. I think it is time to recess here. I thought I'd just express my thoughts on the matter here and we could be thinking about it over the noon hour.

Mr. Cheadle: I don't wish to speak at this time. We would like to be heard with regard to this particular question, your Honor, even though we do not want to take issue. I believe we've made our record fully, and I think the government has too, for the purpose of appeal. I think we may have some question as to the propriety of the particular question as propounded, to this witness, [1053] although we do not wish to take issue with regard to the particular phase of the matter.

The Court: We will recess until 1:30.

(Whereupon, the Court took a recess in this cause until 1:30 o'clock p. m.)

Yakima, Washington, February 19, 1947

1:30 o'Clock P. M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: I have had the reporter type out a transcript of Mr. Ramsey's question. Do you have a copy of it, both of you?

Both Counsel: Yes, your Honor.

The Court: All right, Mr. Cheadle.

Mr. Cheadle: Your Honor, we believe that the question as put to the witness involves a short-cut in that it would elicit from the witness merely his opinion as to the value to be placed on the power plant less the part thereof to be allocated to irrigation, under the Schwellenbach formula, without the witness having given any testimony which would be any indication to the jury [1054] or the court as to what that allocation made by the witness is. Only one of the witnesses for the defendant District has testified as to such an allocation. He stated the percentage of that allocation, 16.7 per cent, I believe, and then gave the basis for it. We respectfully submit that the allocation of a part of the power plant value, or power properties value, to irrigation is a matter for determination by the jury. It is appropriate to adduce evidence bearing on that, just as it is appropriate to adduce evidence bearing on value, although value in an ordinary con-

demnation case, as in this one, is for the jury to determine. This question as put cuts out, if you like, the determination of allocation by the jury and leaves the jury unable to determine what the allocation is which in the opinion of this witness should be made. Aside from that, your Honor, upon reading the question as transcribed by the reporter, we have no objection to the question other than the objection which we made when the question was first asked, which is for the purpose of preserving our record.

The Court: I see. I think perhaps you will want to say something else after I get through, Mr Ramsey. I don't want to cut you off from being heard.

Mr. Ramsey: Yes, your Honor, I do. It is my position that this is not in any sense of the word a [1055] short-cut, but that it presents an entirely different basis of valuation than would be presented to the jury by giving to the jury the total production capacity or record as estimated by the witness, the net production as estimated by the witness, and then arbitrarily saying "Allocate 60 per cent of the value that is predicated upon that total earning capacity, or 90 per cent, or whatever it may be, as the value of the property not devoted to irrigation"; that for that reason, that that method of summation ignores entirely the fact that the full burden of the cost of the operation, maintenance, and taxes of that plant falls upon the purchaser, whereas the portion allocated to the District imposes upon the District no burden whatever as to those items.

In other words, this isn't a proposition of a sharing between the District and a prospective purchaser of the cost of operation and the net returns from that operation. The prospective purchaser is faced with this situation, that he is taking over a piece of property on which the entire burden of operation, maintenance, taxes, and what have you falls upon him, and he is receiving from that operation only a certain per cent of the net revenues to be derived from its operation.

Now, as to the question raised by counsel, the ultimate question that we are seeking here is not what—[1056] or the answer to the question that we're seeking here is not what this witness thinks or any other witness thinks, but what in the opinion of a prospective buyer, under all of the circumstances of the property as it stood on the date of taking, would be the value of the property, and he is simply expressing his opinion as to what value would be ascribed to the property by the prospective purchasers under the conditions then existing, that is, the imposition of the burden on the property with a cutting off of a large portion of the net revenues from its operation, and I submit to the Court that that is the only basis that this case should or could be submitted to this jury properly on. It is the only basis that is comprehended under the fair value rule.

The proposition of submitting this thing to the jury on the other angle, that is, here's a power plant that will produce so much power, and so much of that power is available for sale, and if there wasn't

any burden on it at all it would produce so much power, and it would all be available for sale; now, what would a piece of property of this character, relieved of all burden, be worth?; now, what is a certain per cent of that sum?; now, that is the formula that it is proposed to submit this case to the jury on, and I submit to the Court that it does not present at all the question of [1057] fair value in the mind of a prospective purchaser, because he would necessarily have in mind the elements that I have detailed here, the burdens that would be imposed on him, together with the cutting off of a very heavy percentage of his possible net revenue.

Mr. Cheadle: The only reply I wish to make to that, your Honor, is that the testimony of the witness Dibble did not involve, there is nothing in his testimony which gives basis for the conclusion that his 16.7 per cent allocation to irrigation properties did not involve allocation of the other elements of the power properties, such as operation costs and so on. If government counsel did not imply that, I misunderstood his argument.

Mr. Ramsey: I certainly did imply it, for this reason, that if there was any such assumption on the part of the witness Dibble there isn't any basis for it at law. The obligation and burden imposed upon the property does not carry with it the burden upon the District to pay its proportionate share of the expenses of the operation of that property after it is sold.

Mr. Cheadle: If I may advert, your Honor, to Judge Schwollenbach's opinion of June, 1945, which

is the pattern of this trial, he referred to an allocation in his opinion, stated that he recognized that it was [1058] difficult, and I am sure that your Honor as well as all involved in this condemnation proceeding will concede the difficulty, but he stated it could be done and had been done at Grand Coulee Dam and Bonneville, in which allocations he had had some part, and your Honor, if necessary, I have in the courtroom an official document, Secretary of the Interior's report to the Congress on the allocation of Grand Coulee Dam costs as between irrigation and power. The testimony of our witness is as I have just stated it; I have just checked it with him, and of course the question could be determined accurately by reference to the transcript. It is the sort of allocation that has been done numerous times between irrigation and power, and I submit that upon re-reading of the memorandum opinion of Judge Schwollenbach it becomes apparent that that is the very thing he had in mind.

The Court: Well, the Court isn't going to change the theory of the case at this time, certainly, after the defendant's evidence is all in and the case is almost closed; at least I hope so. It was supposed to be finished sometime yesterday, but it is still going on, but this is what troubles me. The Court will instruct the jury that they must allocate the value of the power properties as between irrigation and non-irrigation purposes, [1059] as I said before lunch, and I'm going to instruct them to that effect, but shouldn't the plaintiff or either party be permitted here to come in and offer expert testi-

mony directly as to the market value of that portion of the property which he considers was devoted to non-irrigation purposes at the time of taking? The only consideration I am giving to this question is from that standpoint. I don't want to restrict too narrowly the evidence offered here as to the value of non-irrigation property, or for non-irrigation purposes, and I don't want to be put in the position of shutting out the plaintiff from asking this witness directly, if he wants to, as he appears to have done in my view here, what is the value of this property if you leave aside that portion of it that was devoted or within a reasonable time after taking would have been devoted to irrigation purposes, and that leaves, it seems to me, a residue there which should represent the value of the property for non-irrigation purposes, and I have in mind permitting the testimony to be given and admitted for that purpose only, and so instruct the jury, that they are to consider it only in determining the cash market value of that part of the property devoted to purposes other than irrigation at the time of taking. Now, if there is anything further to be said on that, I'll hear from either side. [1060]

Mr. Powell: I didn't so understand the question, your Honor. I didn't understand the question to be such that the answer elicited would have the results that your Honor has in mind.

Mr. Ramsey: Well, I'll say frankly to the Court that that is not the purpose of the question.

The Court: I see. Well, the objection will be sustained. The court is not going to change its position at this time. I think I have made it clear that you can elicit testimony from any expert as to the cash market value of that portion of it not devoted to irrigation purposes at the time of taking, or in all probability would have been so devoted within any reasonable time, but the objection to this question is sustained. I think it is objectionable from the standpoint the court is trying to follow.

Mr. Ramsey: The Court will allow an exception?

The Court: Yes, of course.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

L. E. KURTICHANOF

a witness called on behalf of the Petitioner, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Ramsey: [1061]

Q. Now, Mr. Kurtichanof, from your examination of the records of the power plant properties, and the demands of the Priest Rapids Irrigation District for power for pumping water on to the lands of the District, did you determine what part or what per cent of the power that could be generated or would probably be generated there in the plant would be required for furnishing power to

(Testimony of L. E. Kurtichanof.)

the District for pumping water for irrigation on the lands in the District?

A. I did not get the last couple of sentences there, Mr. Ramsey.

(Whereupon, the reporter read the last previous question).

A. I did not go beyond the determination of the amount of power required for pumping other than what had been experienced in the eleven year period which I studied.

Q. From the records of that eleven year period, you did make a determination of the amount of power that had been demanded, that is, the proportion of the power generated that had been demanded for irrigation purposes, that is, for power for pumping for irrigation purposes? A. Yes.

Q. And what per cent or part of the power so generated was used for that purpose?

A. Well, expressed in demand, it would be as 1200 kilowatts [1062] of demand is to 2100 kilowatts of generating capacity. Expressed in actual kilowatt hours consumed for the entire eleven year period, it was about 38 per cent.

Q. Now, do I understand from that that 62 per cent of the power generated was left available for sale, or was there further reductions?

A. There were further deductions in the allowance for losses.

Q. And that allowance was how much?

A. Expressed in total kilowatt hours would best illustrate it. The total produced kilowatt hours for

(Testimony of L. E. Kurtichanof.)

the eleven year period was 89,747,000; allowance for losses, 2,749,854; sold to P. P. & L. Company, 52,248,591; the self-consumed and transmission losses then would be 34,748,555. This latter figure would include in addition to that used for pumping, that self-consumed in the generating plant for lighting, heating, and whatever purpose is necessary in the generating plant, a very minor amount.

Q. Does it also include the line loss item on delivery?

A. There was an item included in the adjudication of the P. P. & L. Company's billing where an arbitrary figure of 5 per cent was provided to cover losses in the step-up transformers and in the line for transmitting that portion of the power transmitted to the Pacific Power and Light Company. Other losses would be very minor. [1063]

Q. Now, did you reduce your last figure to per cent for the purpose of showing what percentage of the total production would be available for sale?

A. I did—that is approximately 38 per cent—oh, for sale, you mean?

Q. Yes.

A. Well, it couldn't have been any more than was actually sold, because that is the true experience.

Q. And the amount sold over that period represented what per cent of the total production?

A. The ratio 52 divided by 89.7, or slightly over 50 per cent. 55 per cent roughly.

(Testimony of L. E. Kurtichanof.)

Q. Roughly 55 per cent of the total power produced was available for sale over that period?

A. Was actually sold.

Q. Now, Mr. Kurtichanof, based upon the formula of an allocation of value in the non-irrigation assets of the District, that is, the power plant, the power canal, and the 14.4 miles of transmission line to the figures which you have just quoted, that is, 55 per cent for commercial use and approximately 45 per cent for use by the District, self use in the plant, line loss, and so on, what, in your opinion, was the fair value of that portion of those facilities devoted to the production of commercial power? Do I make my formula clear to you? [1064]

A. I think I understand your question, but I did not make an allocation on that basis.

Q. Well, then, let me ask you this, Mr. Kurtichanof; did you make a determination of the fair value of these properties on the 100 per cent basis, assuming that the entire properties were available for production of commercial power?

A. My assumption was based on a slightly different division of the total properties that we're discussing, which includes the power plant, transmission line and pumping plant. My approach was to assign the pumping plant as an asset of an irrigation district. In other words, I divided this entire property into two components, one comprising the production facilities, generating plant, transmission line; and the utilization end of it with a pumping plant was assigned to the irrigation dis-

(Testimony of L. E. Kurtichanof.)

trict, and I assumed that the production facilities would be available for furnishing the energy required to the pumping plant as one item and to sell the remaining power at the market price, which was then covered by contract with the P. P. & L. Company. On that basis I determined an earning value, which was one component that I considered in determining my estimate of fair value.

Q. Then earning value would be predicated upon the sale of approximately 55 per cent of the energy produced in the plant? [1065]

A. On the performance as actually experienced.

Q. Now, your determination of fair value was not based alone upon that item, however?

A. It was not.

Q. Would it be possible for you to give us your figure on that 55 per cent basis, standing alone?

A. Yes, by taking the production facilities and the transmission facilities, corrected for that arbitrary division that you have made for 1.6 miles of the 16 miles, allocating it to pumping, that could be done, yes.

Q. Will you make that computation for us?

Mr. Powell: Before he makes the computation, if your Honor please, I believe the percentage is 58 per cent instead of 55 per cent.

A. I just figured it roughly in my head.

Mr. Powell: And in addition, I would like to make the objection that it is based on several erroneous elements, one being that for ten years, at least,

(Testimony of L. E. Kurtichanof.)

it was not the plant taken; it was a plant that was inferior, because of the improvements in the canal and the old generator.

The Court: As I understand it, the earnings are only one element that he's taking into consideration?

Mr. Ramsey: That is right.

The Court: Objection will be overruled.

A. That computation will be substantially the same as I gave [1066] you a while ago, wouldn't it, with this exception, that so far we have not talked of another value which I have taken into consideration, and that is intangible value. The matters we have discussed so far are merely the physical values.

Q. Well, now, Mr. Kurtichanof, can you give us your fair value on that plant, and we'll leave it to the jury to make the computation on the percentage basis; what you determine to be the fair value of the plant, that is, the items that I have mentioned, the hydro-electric plant, the power canal, and 14.4 miles of the transmission line, inclusive of intangible values or any other values that you may have ascribed to it? A. Inclusive?

Q. Yes, your ultimate figure as to the fair value of 100 per cent of the entire plant.

Mr. Powell: You have included, counsel, all the other elements of the question?

Q. Any item that you took into consideration in reaching that value, simply your 100 per cent fair value of those items that I have mentioned.

(Testimony of L. E. Kurtichanof.)

A. I have not so computed it in my report, but I can adjust it. I'll have to deduct the cost of the pumping plant from the picture.

Q. And also 1.6 miles of transmission line.

A. Yes. Excluding the pumping plant, excluding the 1.6 miles of transmission line between Coyote Junction and the pumping plant, and figured on the same basis that I figured it before, the fair value that I find would be \$375,477.00.

Q. And that is 100 per cent value?

A. That is depreciated value.

Q. Yes, 100 per cent fair value? A. Yes.

Q. Now, your figure of \$62,788.00 on the pumping plant as the reproduction cost less depreciation should also be adjusted to include the 1.6 miles of transmission line from Coyote Junction to the plant.

A. Yes.

Q. I believe that's the way the other witnesses have handled that, and with the addition of that item to the \$62,788.00 what would be your reproduction cost less depreciation figure for that pumping plant and that portion of the transmission line used only in supplying power to it?

A. \$63,980.00.

Q. \$63,980.00, is that correct? A. Right.

Q. Now, with reference to the power plant site up there, did your examination show that the District owned a considerable acreage of land in the immediate vicinity of [1068] the power site?

A. That information was supplied me by the Army Engineers, and shown on the map given to me.

(Testimony of L. E. Kurtichanof.)

Q. And was that land located along the line of the canal and down to and surrounding the power house itself?

A. Yes, and some below the power house for transmission line right of way.

Q. From your examination of that land and the power plant property, what, in your opinion, is the highest and best use to which that land can be devoted?

A. Well, the first use must be reserved for the operation of the plant.

Q. And why is that necessary?

A. In order to provide access to all features of it, the canal and all, for necessary operation and maintenance.

Q. Is it the ordinary procedure for a hydro-electric company to acquire a considerable acreage of land surrounding its power plant and paralleling its power canal?

A. It is frequently found necessary to buy more land than is actually needed for a right of way or for purpose of occupancy when buying right of way for a power plant development.

Q. And why is that?

A. Because it's just as cheap to buy the entire tract from an owner as it is to buy a portion of it, frequently. It [1069] perhaps impairs the value of the remaining portion to such an extent that it's necessary to buy the rest of it.

Q. Or at least advisable. I think that's all.

(Testimony of L. E. Kurtichanof.)

Cross-Examination

By Mr. Powell:

Q. Mr. Kurtichanof, when you stated that you spent twenty-six days in the field——

A. Yes, sir.

Q. ——surveying this property, or making your examination——

A. That's right.

Q. ——you stated that you spent some time looking over records. That was included in the twenty-six days?

A. Yes.

Q. How much of the time did you spend looking over the records and how much of the time did you actually spend at the site?

A. I think that I was in the office parts of two days, first in company with Mr. Grell, who pointed out to me where the records I was looking for might be found, the drawings is what I was looking for, then he was otherwise occupied, and he left me there to examine the drawings at my leisure to make selections of such as might be of use to me, and that arrangements would be made to provide me copies of any found that I wanted.

Q. When you say that you spent twenty six days in the field, do you mean twenty six days on the project, or does that [1070] include the time you spent in the Pacific Power and Light Company office and in Mr. Hall's office?

A. It included the time I was in Mr. Hall's office, but not in the Pacific Power and Light Company office, because that was in connection with the work after I got my field information.

(Testimony of L. E. Kurtichanof.)

Q. You can't tell us the exact number of days, in other words, that you were actually out there on the land or in the power house, can you?

A. Oh, no.

Q. You did not keep track of it that way, did you?

A. No.

Q. But you did spend a considerable portion, quite a number of days, in actually going over the property, didn't you?

A. I did, yes.

Q. Did you examine the power canal from one end to the other?

A. Yes.

Q. How long were you there with the crew?

A. I was there two days.

Q. And were you with the crew all the time?

A. All the time.

Q. You saw everything they did?

A. Yes, I think so. Of course, there were three or four other men. Some of them might have seen things not of interest to the thing. [1071]

Q. And this profile map that you made, what do you call it, profile sketch, showing the cross sections—

A. No, Mr. Yeoman, the chief of party, made the sketch. He kept the field notes.

Q. That is plaintiff's Exhibit "J." This cross section, the sketch showing cross sections of the canal, was made by Mr. Yeoman under your direction?

A. Yes.

Q. And did you go clear up to the head of the canal, Mr. Kurtichanof?

A. Yes.

Q. Did you see the crib dam up there?

A. I did.

(Testimony of L. E. Kurtichanof.)

Q. You didn't include it in your figures, did you?

A. I did.

Q. Where?

A. As I tried to explain, I took all of these various items, physical structures, in conformance with uniform classification of accounts as practiced by public utilities and required by the Federal Power Commission, and that is one of the elements priced in my hydro-electric power plant.

Q. But you've given us the unit cost of the power canal. Do you include in that unit cost the construction of the crib dam? [1072]

A. No, I have a separate item for the diversion dam.

Q. You didn't give that.

A. It is included in dams and waterways.

Q. That wasn't given, was it, in your direct examination?

A. I don't know whether I was asked that. I have a detail of it.

Q. What item did you include for that, just the total of it?

A. Estimated reproduction cost, \$17,825.00; per cent condition, 60; depreciated value, \$10,695.00.

Q. That is the crib dam?

A. Yes, the diversion dam.

Q. And what about the spillway, do you have that too?

A. That is included in the quantities computed with the canal.

(Testimony of L. E. Kurtichanof.)

Q. Now, did you include any concrete in the spillway construction? A. I did.

Q. Where is that? A. It is in the canal.

Q. You didn't include any concrete in the canal, did you?

A. Well, I have it in my working papers, yes. I didn't show it as a detail. I think I testified as to the total cost, the yardage of excavation, and so on, but I can give you the detail of you wish.

Q. Well, just give us the total figure, if you have it. [1073]

The Court: For the spillway?

Q. For the spillway.

A. No, the items in the spillway are included with the canal, because that is part of the canal.

Q. But my point is, Mr. Kurtichanof, that you didn't include any concrete in the canal construction? You just included the excavation, is that right?

A. Oh, no, no, that isn't right. I perhaps only mentioned the excavation in there in my summary. I described the canal, unlined canal about 10,170 feet in length, with a designed bottom width of 70 feet; for about half of the total distance it is excavated in gravel. The remaining portion is on a natural high water channel of the river, where a minimum excavation was required, and opposite that I show an accumulation of all considerations which I have taken into consideration, which amounts to \$131,465. That includes the concrete found in the spillway, the stop logs, everything that was evident.

(Testimony of L. E. Kurtichanof.)

Q. That includes the crib dam also?

A. No. The diversion dam is a rock filled wood crib structure, approximately 560 feet in length, and an average height of about 6 feet, and I just quoted you the estimated reproduction cost on that.

Q. That is included as an item in addition to the canal? A. Yes. [1074]

Q. Now, speaking of the depreciated cost and depreciated value of the canal, Mr. Kurtichanof—

A. Yes.

Q. —you have given us a figure of—

A. 70 per cent.

Q. —70 per cent condition? A. Yes.

Q. In other words, you've taken off about \$40,000 from the construction cost new of the canal, is that right? A. Yes.

Q. And you said that that had to do more particularly with deferred maintenance?

A. Yes, the accumulated deferred maintenance.

Q. Have you ever operated a power house?

A. I have.

Q. Where?

A. I have operated many power houses, and I just built one, finished one, less than two years ago.

Q. I'm talking about operating one.

A. You mean actually operate the switch board?

Q. I mean take care of the running of it, yes.

A. Not on a hydro plant; I have steam.

Q. Have you ever had anything to do with the maintenance of a canal such as this? A. Yes.

Q. Have you ever done maintenance work on it?

A. Not personally, no.

(Testimony of L. E. Kurtichanof.)

Q. Or supervised it?

A. I have supervised it.

Q. Just how did you propose to get this deferred maintenance work done?

A. Why, it would have to be done in the manner it was originally done, by moving in material handling equipment or earth handling equipment, and dig it out.

Q. You feel it would be necessary to dig out the obstructions in the canal?

A. Yes, I do.

Q. Now, in your survey of the channel of the canal you found that it was widened to some point above the spillway, didn't you?

A. Let me get that again, please.

Q. Well, in your surveying of the power canal, did you find that it was wider to some point above the spillway than it was below that?

A. Wider to some point—beginning at the power house, is that where you mean?

Q. No, beginning at the upper end of the canal, was the canal wider down part way than it was the balance of the way to the power house?

A. Oh, yes, in the vicinity of the cut-off canal and the [1076] natural channel for some distance below it was probably oh, 200 feet wide.

Q. And what about below that point?

A. At the lower point of that is where the construction was in the dump portion of the canal.

Q. And your \$40,000.00 includes taking out this restriction?

(Testimony of L. E. Kurtichanof.)

A. Yes, it appeared considerable erosion slid down from the bank into the canal, heavy boulders.

Q. Did that include removing any rock?

A. No solid rock, no. There was a natural obstruction there where the canal had not been dug to a full width, through a section of rock.

Q. Would it include removing that rock?

A. No, only the deferred maintenance.

Q. Did you in your examination of historical data find out how it happened that this canal was wider down to that point than it was below?

A. Well, I think it is quite evident that it was a high water natural channel of the river that had been improved in part.

Q. Did you consider the possibility, Mr. Kurtichanof, of getting the silt in the channel agitated so that it would be water-borne and go out through the turbines?

A. Yes, I thought of a good many things, but it is very difficult to pick up sediment once it's been deposited. [1077] It would take tremendous velocities to stir it up again.

Q. Did you find out the amount of work that had been done in the canal in 1941?

A. Yes, I had plans and specifications prepared by Mr. Hall covering that work.

Q. And did you find out the work that had yet to be done at that time?

Mr. Ramsey: Just a minute; that is objected to as incompetent, irrelevant and immaterial, and not proper cross-examination.

The Court: Objection sustained.

(Testimony of L. E. Kurtichanof.)

Cross-Examination

(Continued)

Q. Did you take measurements of the water in the canal?

A. I did not, not of the flow. I took measurements of the elevation.

Q. Did you take measurements or do you know the amount of water in the river at the time?

A. No, I do not.

Q. Do you know, Mr. Kurtichanof, whether there was enough water in the river at all times during the period that you have been testifying about value——

A. Oh, yes.

Q. ——to run the power plant at full capacity?

A. Oh, yes, and a great deal of excess beyond that.

Q. I believe you stated that you used the uniform system of [1078] accounts?

A. Yes.

Q. Advocated by the Federal Power Commission?

A. Yes, it is prescribed by the Federal Power Commission for use of electric utilities.

Q. It is prescribed, or required?

A. Well, required. I don't get any distinction in that respect.

Q. Well, it is a matter of terms, I believe. Do you have your pamphlet of those requirements with you?

A. Do I have what?

Q. The pamphlet of those requirements with you?

A. No, I have not.

(Testimony of L. E. Kurtichanof.)

Q. There are certain distinctions, aren't there, between generating plants and transmission plants?

A. Oh, yes.

Q. Canals and spillways?

A. You first have production plants, with their subdivisions of water power, steam, Diesel engine, and other, and all their associated divisions; then you have transmission plant, which will include lands, structures, and towers, poles, towers, fixtures, conductors, and things of that nature.

Q. And you did use that in making your allocation of values here? [1079]

A. No, in arranging the various physical items.

Q. Where did you put the transformers in the power house? A. In production plant.

Q. In the production plant? A. Yes.

A. As a matter of fact, the accounts you've been talking about put them with the transmission system, don't they?

A. Sometimes; sometimes they're put into 352, station equipment.

Q. What about 343, station account, transmission plant? A. 343 what?

Q. 343, station equipment, under transmission plant?

A. Yes; now, there's a latitude of choice there.

Q. But you didn't put them in the transmission plant?

A. I did not put them in the transmission plant, I put them in the production plant, I believe; just a minute. Yes, I put them in hydro-electric power plant, in the production plant.

(Testimony of L. E. Kurtichanof.)

Q. Did you give them any value?

A. Pardon?

Q. What value did you give them?

A. The estimated reproduction cost new for the three transformers, each rated 1000 kilowatts, is \$8805.00. Per cent condition was 69, depreciated value \$6075.00. In addition, there was a spare set of windings for one of [1080] these transformers, for which my estimated cost of reproduction is \$700.00, per cent condition 100, depreciated value \$700.00.

Q. Now, going to the power plant structure, Mr. Kurtichanof, you measured the volume in there?

A. Sir?

Q. Did you measure the house to determine the quantities of material?

A. Yes, I measured all available portions. That portion that is not visible, or not easily get-at-able, I took from the drawings.

Q. I believe you said you didn't know whether it was re-enforced or not?

A. The power house structure is re-enforced in certain elements. I said that the pumping plant is probably not re-enforced.

Q. How did you arrive at your value per yard of the excavation of the rock? I see it is the same as the excavation of rock in the canal. Isn't there any difference?

A. No, there shouldn't be, when you take into consideration I provide a coffer dam and un-watering.

(Testimony of L. E. Kurtichanof.)

Q. Well, isn't it necessary ordinarily in putting a power house like this on the side of a rock ledge to excavate in shelves to lessen the danger of the plant sliding or slipping from the pressure of the water above? [1081]

A. The rock foundation is at such an elevation that the structure proper was not in rock. It is only the draft tube and tail race portion that is in rock.

Q. And where did you get that information?

A. From observation in the field. The rock foundation is easily discernible.

Q. And you think that that would require the same kind of—take the same unit cost per yard in excavating for the power house that it would in the canal, where you could just side-cast with a shovel?

A. Well, you could do the same thing here, and there is very little of it.

Q. How did you arrive at your unit cost in the concrete work in both structures, power house and pumping station?

A. I estimated cost of materials.

Q. What price did you use for cement?

A. Oh, I think the market price at that time was around \$3.00 a barrel.

Q. How many sacks in a barrel?

A. 4, usually.

Q. And what kind of a mix was this, 4 or 6 sack mix? Couldn't you use a 4 sack mix for the heavy work and a 6 sack mix for the super-structure?

(Testimony of L. E. Kurtichanof.)

A. No, I don't mix concrete that way any more, that's old-fashioned. [1082]

Q. I see, sir.

A. The mixes are determined by the strength requirements, the mixes of the aggregates and the water and the cement.

Q. Doesn't the cement in the aggregate have something to do with the strength?

A. Yes, I say, in proportion; that is, your aggregates and cement and water in a certain proportion to attain certain strengths, and in mass concrete you don't require great strength; you use a lean mixture.

Q. Well, isn't a 4 sack mix a lean mixture?

A. Well, it depends entirely on your grading of your aggregates. That doesn't mean anything to me. I'm not a concrete expert.

Q. It would make a difference as to the size of the sand or gravel you used in your mix?

A. Well, in order to get the proper concrete you would have to proportion your aggregates in just the right amounts.

Q. I don't mean to argue with you about this, Mr. Kurtichanof. What price did you use for the cement?

A. As I recall, it was around \$3.00 at the market, plus transportation to the site.

Q. \$3.00 a barrel, or \$3.00 per yard of concrete?

A. \$3.00 per barrel of cement.

Q. What kind of mix would you put in the building, to form your figure of \$16.30? [1083]

A. I haven't the details of all that here, no.

(Testimony of L. E. Kurtichanof.)

Q. How do you know it is going to cost \$16.30?

A. I figure that is a reasonable price. You have a number of variables there, you can adjust the cost.

Q. That's what I want to find out, what are they? You realize your figure is just about half of the other men that testified?

A. Yes, less than half in some cases.

Q. And there must be some reason for it?

A. The reason is certain elements of cost are not there that exist in others. Your concrete is very massive there, the walls run up to five feet in thickness. Compare that to a wall eight inches or a foot in thickness; the forming becomes practically an insignificant matter. Furthermore there is plenty of evidence that the aggregates used were obtained right there on the site, natural mix, bank run, requiring a minimum cost for your raw materials.

Q. And where would you put your mixing plant?

A. As convenient to the site as you wish.

Q. Where would you put the mixing plant to mix the cement to put in this building? I presume, Mr. Kurtichanof, you went into this matter just as though you were a contractor going to build this building?

A. Yes.

Q. Would you be willing to build this building and put all [1084] the concrete in there at \$16.30 a yard?

A. I think that would be quite reasonable at the time.

(Testimony of L. E. Kurtichanof.)

Q. I do too, very reasonable, in 1943?

A. Yes.

Q. Prices were kind of high then, weren't they?

A. Not anywhere near what they are now. Average construction cost had only increased about 12 per cent over pre-war 1940.

Q. What would you pay your labor for mixing this cement?

A. Whatever the current wage was at that time. As I recall, it was about a dollar an hour.

Q. How many yards of concrete would you anticipate would be mixed and put in the forms by a man during the day? It is rather hard to estimate, isn't it?

A. Well, that—huh—one man doesn't mix. You have to have a crew of men, and equipment; you have to have material to handle the equipment; you have to have the mixers, wheel barrows or buggies or chutes, or you might have a pump-crete job, so that isn't a reasonable question.

Q. All those things you've mentioned go into the cost of mixing and placing the concrete?

A. That is right.

Q. Did you have any figures on jobs in the State of Washington when you arrived at that figure of \$16.30 a cubic yard? You stated you had some experience in Oregon. [1085]

A. I don't recall whether I had any specific figures in Washington at that time or not.

Q. There was available, wasn't there, a record of the bids on the Roza Project at almost that same time?

(Testimony of L. E. Kurtichanof.)

A. I presume so, and I think perhaps I have it on file.

Q. You don't recall whether you used it or not?

A. No, I don't recall, because I did examine a great many others, but I don't remember them now.

Q. It would cost quite a bit to install a mixing plant down there in a place like that, wouldn't it?

A. No, not too much.

Q. Did you include in your power house figure the cottages for the operators?

A. In the hydro-electric power plant, I did.

Q. What price—what value did you put on them?

A. Operators' cottages, number 1, reproduction cost new, \$4,000.00; depreciated value, \$1000.00. Operators' cottage number 2, reproduction cost new, \$3600.00, depreciated value, \$900.00. Cottage number 3, reproduction cost new, \$3500.00, depreciated value, \$700.00. Schoolhouse—

Q. I don't know that the school-house is in here.

A. It was pointed out to me as irrigation district property at the time.

Q. All right, you can give us the school-house, then. [1086]

A. Reproduction cost new, \$1600, depreciated value, \$400.00. A log cabin, one room log cabin, 12 by 16, reproduction cost new \$150.00, depreciated value \$15.00.

Q. Was it occupied, sir? A. No.

Q. You have given us, then, the figures that you have used in arriving at your value of the entire over-all value of the power property?

(Testimony of L. E. Kurtichanof.)

A. In addition to that I have the lands applicable to this part of the problem, the price of which was given to me, or the estimated reproduction cost of which was given to me by the Army Engineers, that were involved for parcels of land.

Q. All right, could you give us that, please?

A. Yes. Parcel A, which is fully described but amounted to about 104.7 acres, estimated cost \$304.00, per cent condition 100, depreciated value \$304.00. Parcel E, containing 74.8 acres, more or less, appraised at \$75.00, depreciated value \$75.00. Parcel C, containing 90.8 acres, more or less, appraised at \$45.00, depreciated value \$45.00. Parcel D, containing 236.2 acres, more or less, appraised value \$236.00, depreciated value \$236.00, total of lands, \$660.00 new, \$660.00 depreciated.

Q. And that includes all of the land there at the Priest Rapids site, is that right? [1087]

A. Yes, in connection with the hydro-electric power plant.

Q. Now, Mr. Kurtichanof, I'd like you to take, if you will please, a copy of, or rather the original of Exhibit 9, which is the Tinling inventory, and I want you to compare, if you will, please, the values you put on some of the equipment with the values Mr. Tinling has put on them. Will you just start at the first page, please, Item 1, substation. Do you have the item divided as he has?

A. No, I have not. I have no item of substation anyway.

(Testimony of L. E. Kurtichanof.)

Q. You've included the transformers in the price you've already given us? A. Yes.

Q. Now, did you price the two generating units separately? A. Yes.

Q. What was your price on number 1?

A. Unit number 1, reproduction cost new \$45,-793.00; unit number 2, reproduction cost new \$59,-062.00.

Q. Now, what's your depreciated value of unit number 1? A. \$23,354.00.

A. And of number 2? A. \$56,109.00.

Q. Now, as a matter of fact, Mr. Kurtichanof, the production of the unit number 1 in energy kilowatts or power kilowatts or energy kilowatt hours that comes from the generator is just the same as the energy coming from the old [1088] generator, you can't tell the kilowatts made by an old generator from the kilowatts made by a new generator, can you? A. That is true.

Q. It is all the same kind of power?

A. As far as I know.

A. And I believe you said that the depreciation you would compute on a plant of this kind would depend somewhat on whether it was overloaded and whether it was run continuously?

A. That was one of the elements.

Q. Considered with age, obsolescence?

A. Age, obsolescence, wear and tear.

Q. You said it would be almost impossible to replace the number 1 unit, or the wheel, without going to rather prohibitive cost?

A. That is right.

(Testimony of L. E. Kurtichanof.)

Q. I take it, then, that your \$45,000.00 did not reproduce the wheel in its then condition; rather, reproducing a new wheel like the old one?

A. One that would provide the power to drive the number 1 generator.

Q. But you haven't included in that figure a triplex Francis type wheel?

A. No, I have not. [1089]

Q. What kind did you include?

A. A simple Francis wheel—no, I take it back. It was really a composite of prices I had on Francis type wheel, propeller type, and also on a combination type as put out by Leffel, which is more or less of a composite design of reaction and propeller planes. At that time I was getting prices, in fact, firm quotations, on wheels just about the same size.

Q. And in arriving at your depreciation did you take into account the fact that this generator had been shut down part of the time? That would cut down on your depreciation, wouldn't it?

A. Oh, some depreciation continues whether it is in service or not.

Q. Oh, but not as much, I believe you said yourself?

A. Well, that portion that is a function of load would not go on, but there are other elements of depreciation going on.

Q. Now, did you depreciate it because you concluded that it did not have silicon steel?

A. I gave that a matter of depreciation, yes.

(Testimony of L. E. Kurtichanof.)

Q. Why did you depreciate it because it might not have when you did not know?

A. I knew the probabilities were, on account of its age, it did not contain it. [1090]

Q. Did you make any investigation to find out?

A. No.

Q. Do you recall that the Allis Chalmers generator was there when you saw the property?

A. On unit number 1, yes.

Q. Now, going to unit number 2, you have not depreciated that materially, have you?

A. 5 per cent.

Q. Did you go down in the pit and look at the runners in either of these machines?

A. No; unit number 2 was operating continuously every time I was at the power plant. The wheel pit of number 2 was unwatered——

Q. Number 1, you mean?

A. Number 1 unit, the wheel pit of number 1 unit was unwatered. I was down in the wheel pit, but to get into the steel casing, get at the runner, involved quite a job, relieving a lot of bolts and opening up a man hole, and so on. I did not go in.

Q. Now, referring to Exhibit L, which is the map concerning the power plant, Exhibit L is the cross section of the power plant, isn't it?

A. Cross section through about on the center line of one of the units.

Q. The short parallel lines in the center left are the steel [1091] ladder down into the pit, is that right?

A. Into the wheel pit, yes.

(Testimony of L. E. Kurtichanof.)

Q. The exhibit, however, does not show the generator, which is in the place marked "generator unit" or the turbine, does it? A. It does not.

Q. And I will ask you if this exhibit applies to the number 2 unit? Isn't it a fact that the tail race or draft tubes—these, by the way, are the spaces shown in the lower left hand corner of Exhibit L, called draft tubes? A. Draft tubes, yes.

Q. Aren't the draft tubes changed on the number 2 unit?

A. I understand they were changed.

Q. And for what purpose?

A. To adapt them to the new type of wheel.

Q. That is the propeller type of wheel?

A. That is right.

Q. What changes would have been made?

A. Well, either of two changes. I presume the best change would have been to make an elbow type tube out of that, rather than a conical.

Q. For purpose of illustration, the bottom or tapered part of the spacing between the two tubes was cut off, and the upper part sealed off?

A. It would have to be modified quite a bit to provide a [1092] vacuum seal above, and I would judge that it would be built—

Q. There isn't a great deal of difference between your figures and Mr. Tinling's figures in connection with the reproduction cost new of these two generating units, is there?

A. I do not remember the testimony of Mr. Tinling. I have it here.

(Testimony of L. E. Kurtichanof.)

Q. Pardon?

A. Did you want to refer to it?

Q. Yes, will you please?

A. Well, beginning on the first page of Mr. Tinling's, under the sub-head of generating plant equipment, 1, substation, three 200 Ampere, 60 K.V., hook stake operated disconnect switches, priced at \$325.00 total. I found four there, which I have priced at reproduction cost of \$536.00, depreciated value, \$279.00. The fourth one he probably did not test, because it was used for grounding.

Q. No, I had reference particularly, Mr. Kurtichanof, to the generating equipment, that is, the two items of generating units 1 and 2.

A. This is entitled generating plant equipment.

Q. Yes, that's right.

A. Generating unit number 1?

Q. Yes. [1093]

A. All right. My estimated reproduction cost new for the complete unit, which meant the water wheel, the generator and its associated governor, was \$45,793.00.

Q. Oh, I see, you include the governor with that?

A. The governor is always purchased with the wheel except for a replacement or something of that kind.

Q. And what about the exciting equipment?

A. The exciter is a separate unit; both the exciters are separate, independent units. I find about \$19,000.00 difference in the case of generator unit number 1 between my price and Mr. Tinling's.

(Testimony of L. E. Kurtichanof.)

Q. Where did you get your price?

A. Oh, I have prices from different manufacturers on generating equipment.

Q. Do you represent any manufacturers?

A. I do not, but I am supplied renewal sheets and price sheets as prices changes, as data changes; I'm supplied with new sheets regularly.

Q. Have you ever been engaged in the contracting business? A. I have not.

Q. Is your price the price installed, or factory prices?

A. The price sheets I refer to? No, they're manufacturer's prices.

Q. Then they would be factory prices?

A. Factory prices, and sometimes they are freight allowed to [1094] destination, the nearest railroad.

Q. Does your figure of \$45,000.00 allow putting the machinery in? A. Yes.

Q. Where is that item?

A. It appears in the detail.

Q. I though that was the manufacturer's price of the articles, is that not right?

A. No, this is reproduction cost new, installed, as is.

Q. Now, going to the transmission line, Mr. Kurtichanof, you stated, I believe, that the line was much larger than it needed to be?

A. For the present capacity of the generating plant, and the load that has been imposed on it.

(Testimony of L. E. Kurtichanof.)

Q. In other words, it is big enough to carry the load even if they put in the four new generating units? A. Yes.

Q. Isn't it a fact that the line as now constructed is a large line, and that there is less line loss on a large line than on a small one?

A. Yes, but it is an extravagant way of reducing losses.

Q. You wouldn't deduct from the value of the line because it was too big, and saved money by reducing line loss?

A. If I was to reproduce the line, it would be the height of extravagance. [1095]

Q. But the government is buying that line?

A. Yes, but it is in such depreciated condition you would have to rebuild it, and you would have to build new poles, new cross arms.

Q. I am talking about the wire. The wire is just as good, isn't it? A. It is.

Q. If you were building another line would you take that line down?

A. If I were a prudent purchaser I would look at what I'd have to spend to put that line into serviceable condition.

Q. Let's just talk about the wire a little while. You said the wire was too big for the load it had to carry? A. Bigger than necessary.

Q. It doesn't decrease its value because it is bigger than the load it has to carry?

A. Not for that purpose, no.

(Testimony of L. E. Kurtichanof.)

Q. Then as a matter of fact the wire is just as good as though it were a smaller wire?

A. Its physical characteristics have not deteriorated.

Q. And did you depreciate it because it is too big?

A. Not for that reason, no.

Q. Then the depreciation is entirely in the poles, isn't it?

A. The depreciation is on the line as a completed structure, and the various elements are not capable of being separated [1096] and maintain a complete transmission plant.

Q. You could take the wire off the poles and sell it for more than you want to give us for the transmission plant, couldn't you?

A. No.

Q. Not very much difference, is there?

A. Quite a bit.

Q. Much much?

A. I have exact quotations. As I remember, it was around eleven cents a pound F.O.B. Massena, New York.

Q. You mean you would have to send the wire back there to get a credit on it?

A. Yes.

Q. Couldn't you sell it out here?

A. Nobody but the Aluminum Company of America would buy it at that time.

Q. When was that?

A. In 1943.

Q. Because of government regulations?

A. Some of them, yes.

(Testimony of L. E. Kurtichanof.)

Q. Have you charged us with those in your computations?

A. In computing my salvage value I have some of them, yes.

Q. How about this generating equipment; in 1943, if it weren't for the ceiling prices, people would have paid more for old generators than they would new, wouldn't they? [1097]

A. Well, your guess is as good as mine.

Mr. Ramsey: I don't think we ought to go into the realm of speculation. I object to that line of questioning.

The Court: Well, let's have a question. We'll see if it is objected to.

Cross-Examination

(Continued)

Q. What was the ceiling price on generator number 1 on October 1, 1943—well, you have given us that as \$45,000 new.

A. That is the water wheel and generator with governor, and in place, in operating condition.

Q. What was the ceiling price new?

A. I can't remember.

Q. What was the ceiling price of used generators? A. Oh, I don't know.

Q. As a matter of fact, it was 85 per cent of the new price, wasn't it? A. I don't know.

Q. Well, couldn't all these generators have been sold for the ceiling price?

A. Oh, I presume so.

(Testimony of L. E. Kurtichanof.)

Q. Did you buy or sell any generators in 1943?

A. I bought two.

Q. They were new, weren't they? [1098]

A. Yes; they were incompleated at the time of purchase; they had been allocated to another agency, and then the War Production Board assigned it to our client.

Q. By the way, you say this power house, too, is over-built, as well as the transmission line. Do you depreciate it on that account?

A. I gave it consideration.

Q. You gave it consideration? A. Yes.

Q. Would it increase the value, or decrease it?

A. I don't think I decreased it. I don't recall just how much weight I did give to that element.

The Court: We will take a recess now for ten minutes.

(Short recess.)

Cross-Examination

(Continued)

By Mr. Powell:

Q. Did you find the same number of poles in the transmission line that Mr. Tinling found?

A. I don't remember how many he had.

Q. He had 580.

A. I think I had a few more, because I called pole stubs and push braces as poles.

Q. I see; and you have a copy, have you, of Exhibit 9? A. Yes. [1099]

Q. Would you refer to page 6? A. Yes.

(Testimony of L. E. Kurtichanof.)

Q. You find the items on page 6 to be substantially the things that are required in erecting a pole structure?

A. Yes, the articles are there, but notice the first item, the poles are specified as butt-treated.

Q. You would reconstruct the line with butt-treated poles, wouldn't you?

A. Not as is. If I'm reproducing the system as is, I would use the same poles as found in the line, which would be untreated poles.

Q. Of course, you wouldn't erect a line with stubbed poles either, would you? A. No.

Q. And a lot of them are stubbed, didn't you say? A. Yes, about 84 per cent.

Q. Isn't a lot of the construction on the cliff difficult construction? A. Very difficult.

Q. And some of those poles would cost as much as two or three hundred dollars to erect and install and line up?

A. Well, something of that nature. Perhaps not as high as two or three hundred dollars, but might run as high as, oh, a hundred dollars or so.

Q. How much labor have you figured per pole, or what labor [1100] cost have you figured?

A. On the average pole, about \$5.27.

Q. For labor? A. Yes.

Q. Would you take a contract to dig the hole and set the pole and back fill and align the pole for that amount? A. Yes.

Q. The labor that could be secured in 1943?

A. 1943, yes.

(Testimony of L. E. Kurtichanof.)

Q. That figure was five dollars and what?

A. 27 cents.

Q. Does that include any equipment?

A. All elements of cost other than material. That includes transportation, distribution, and so on.

Q. Going down to the pumping plant for just a moment, Mr. Kurtichanof—— A. Yes.

Q. ——do you have the figure that you've given us on the pumping plant—was that as of April 1, 1943? A. As of September 30, 1943.

Q. Can you give us the figure as of April 1, 1943?

A. I would say that it was substantially the same.

Q. And what about this discharge pipe that you've depreciated to 5 per cent condition?

A. Yes. [1101]

Q. It had been used a season after April 1, 1943 when you saw it, hadn't it?

A. Had been used a season? No, it had not.

Q. Well, practically so; it had been used from April 1 to August 30, wasn't it?

A. Well, I don't know how much use it was subjected to at that time, but it was not used for any irrigation purpose as I understand it.

Q. Do you know which line you looked at that you saw the leaks in? A. Both of them.

Q. They were both in operation?

A. Both under the head between the pump house and the canal, but only one was being used as a dis-

(Testimony of L. E. Kurtichanof.)

charge. Two of the pumps connected in series discharged into the 66 inch line, and the other one discharged into the 72 inch line. They both open into the canal, and unless the head gates are closed at that point the other water flows back into the pipe, back to the gate controlling it in the pumping plant.

Q. You said the efficiency of this plant could be increased by putting in different pumps, is that right? A. Yes.

Q. And if the efficiency of the pumping plant were increased it would take less power, wouldn't it?

A. Yes.

Q. By about 50 per cent, or about one third?

A. Referring to the two pumps connected in series, they each require 450 horsepower to drive, or in the aggregate that is 900 horsepower. A pump designed for the proper head, for the full head, could be driven by a 600 horsepower motor.

Q. That would save——

A. 300 horsepower.

Q. ——save one third of the horsepower now used, or one third of the power now used to operate the two pumps, is that right? There would be a saving of one third?

A. Saving of one third of the 900, yes.

Q. Then there would be a corresponding increase in the commercial power for sale, wouldn't there?

A. Provided there were not other demands, yes.

Q. Well, you're talking about decreasing the demands by increasing the efficiency, aren't you?

A. Yes, that is right.

(Testimony of L. E. Kurtichanof.)

Q. Now, in the operation of the power plant isn't it customary to find a place where you get the greatest efficiency out of your generating units with the water that you have in the canal?

A. Well, you have no control.

Q. Well, you have the wicket gates on your turbines, don't [1103] you?

A. The wicket gates are controlled by your governor.

Q. You can set the governor, can't you?

A. You can set the governor for a constant output with a given head, but if you set those gates at that point, if there is any change in the head, it will also change the output of the unit.

Q. And the governor re-acts?

A. The governor acts to open or close the gates to maintain a certain load.

Q. Then you determine what load you want and set the governor?

A. You can set the governor and block it in any given position, yes.

Q. Now, isn't it customary in the operation of a plant to determine in the operation of your generating units where you get the most efficiency?

A. Well, you can determine it, yes.

Q. Well, to reduce it to a formula, the power that you get from your generating equipment is determined by the head of water and the quantity of water, isn't it? A. Yes.

Q. And when you vary one you may change the relationship, is that right? [1104]

(Testimony of L. E. Kurtichanof.)

Q. Did you determine in your investigation there what head and what quantities of water got the maximum efficiency out of the plant?

A. No, I did not.

Q. There is, however, a direct relationship between the two, isn't there?

A. There is for a specific design of the water wheel, yes.

Q. Also, when you decrease the head you increase the velocity in the canal, don't you? That is, I mean when you open the gates at the lower end of the canal that increases the velocity of the water in the canal, doesn't it?

A. With a fixed head at the intake, yes.

Q. Well, that is where the head is fixed, there is nothing to change; you can't change the magnitude at the intake of the canal?

A. No, you cannot.

Q. In this particular instance. Then, did you determine what effect it would have on the silt in the canal if the gates were opened at the fore-bay and in the turbines and the silt was allowed to go on through the turbines as a means of disposing of your deferred maintenance?

A. Well, the gates, the head gates controlling the water flow to the water wheel are always open, and the regulation of the flow is taken care of by the wicket gates, [1105] through the agency of the governor. The governor is sensitive to the load which is demanded.

(Testimony of L. E. Kurtichanof.)

Q. But you can set your governor so the wicket gates will be wide open, can't you?

A. Yes, but you'd have no control then over your regulation of speed or frequency.

Q. What I'm talking about is whether you determined how hard it was to move this silt out of the canal?

A. No, I made no attempt to determine.

Q. And did you make any determination as to whether they could gain more power from the generating equipment by decreasing the head at the power plant, and thus increasing the quantity of water?

A. I can't get that relationship. If you decrease the head you decrease the volume of water.

Q. Oh, no; you said yourself if you lower the level of the canal at the power house it is easier for the water to flow through the power house.

A. Yes, but at the same time you're decreasing your cross section of the flow.

Q. You don't decrease the flow in the canal by letting the water run out freely in the lower end, do you?

A. Well, but you will appreciate that the canal is of trapezoidal section, sloping sides. If you decrease the depth at the lower end you also decrease the area. [1106]

Q. But you don't change the area at the upper end, do you? A. No.

Q. What limits the amount of water you get in the canal? Isn't it the size of the intake?

A. Not necessarily, no.

(Testimony of L. E. Kurtichanof.)

Q. What is it?

A. You've got to open it up at the lower end, too.

Q. If you open it at the lower end you get more water in the canal? A. Yes.

Q. Did you determine how far you should open it at the lower end to increase the quantity of water and thus get more power?

A. That doesn't make sense to me, some way or other.

Q. I'm sorry. You have given us the formula that the power is the head plus the quantity of water used? A. Yes.

Q. If you decrease your head you get more water, don't you?

A. I don't see how you can; it is the head that causes the flow.

Q. No, the head at the power house; let's say the difference between the tail race and the fore-bay is the head, isn't it?

A. It is the head, yes, but you have another head, that is, between the fore-bay and the point of intake. [1107]

Q. I see, we're talking about two different heads. The head I'm talking about is the head at the power house. A. Yes.

Q. If you open the gates at the power house, you decrease the head between the intake and the outlet at the power house, in the canal?

A. Well, that pre-supposes you're going to let that water flow through there freely.

Q. That's right.

A. Which is doesn't, normally.

(Testimony of L. E. Kurtichanof.)

Q. Normally it doesn't, but there is a point, isn't there, Mr. Kurtichanof, where you get your maximum efficiency from your generating equipment?

A. Well, you would get your maximum efficiency at the point for which the wheel was designed to produce maximum efficiency, and if you vary that head you will affect your efficiency.

Q. Then you don't think you can change the output of the generating equipment by changing the relationship between the head and the quantity of water?

A. You're bound to, if you change the head, but you have to change the flow, too, at the same time, to maintain a constant power.

Q. That's what I say, you can change the head and thus change the flow in the canal. You did not make any [1108] studies of that, did you?

A. No. I made one observation; it happened the load was rejected at one time, and I watched the elevation in the fore-bay rise, and then when the load was picked up I noticed the fall. That gave me an indication of the hydraulic slope of the canal.

Q. What is the slope?

A. I say at that particular time, that particular condition existing in the fore-bay, in the intake, and the condition of load, as I remember it, the drop was about one and a half feet.

Q. In the entire canal?

A. At the point of gauge, yes; that would be in the canal right at the gauge in the fore-bay.

(Testimony of L. E. Kurtichanof.)

Q. You realized that probably cut down the power production? [1111]

A. That might be one, but there were other elements that were inexplainable.

Q. Well, the principal shutdowns were during months of low water, were they not?

A. In the winter months.

Q. And you don't see any shutdowns during 1942, after the canal was completed, do you? You might take a look at it and be sure, sir.

A. That is right; my recollection is there was no shutdowns.

Q. Then if you give much weight to the years prior to 1941 you don't allow for anything for construction of the new canal, nor for the new generator, do you?

A. Well, that would be again a matter of conjecture, because I have the record for eleven years prior to that, in which for several months the plant was not operating.

Q. And right after that you have the time when the canal was completed and the new generator put in, and there wasn't a single shutdown?

A. Yes.

Q. Don't you think that should be taken into consideration too?

A. Well, I think it got proper consideration for the fact that there was extraordinary production for that year over the other years.

Q. That should increase the value of the plant, shouldn't it? [1112]

(Testimony of L. E. Kurtichanof.)

A. That was an element that was naturally taken into consideration.

Q. In your studies of the historical background of this plant did you find the time when the line was changed over to a commercial line?

A. I believe I did find some reference.

Q. Well, just from your memory; you don't need to look at your records about it.

A. Mr. Grell told me the date; I believe it was about 1912, as I recall.

Q. There was an entire reconstruction of the line at that time, wasn't there?

A. Yes, but I think that he had some data that is not strictly true. I'm not certain as to that. From other historical data it is my recollection that the transmission line as originally built was designed to operate at 22,000 volts, and it gave the spacing of 54 inches, and so on, between conductors, and I think it was about 1912 that it was reported to have been re-insulated, and conductor size increased to what it is now. I think Mr. Grell reported to me that it was 33,000 volts. There was some discrepancy there.

Q. It was actually 22,000 volts, wasn't it?

A. That would be my impression.

Q. There's no argument that this is a 66,000 volt now?

A. That is right. [1113]

Q. Did you take into consideration in fixing your value the reasonable selling price for available power in 1943?

(Testimony of L. E. Kurtichanof.)

A. I took into consideration only the facts as they were, which was a contract to sell at the price stipulated in the contract.

Q. In other words, you valued the property with an encumbrance, if this contract should be fixed as an encumbrance; the only price you considered is the price in the contract, is that right?

A. I took into consideration the facts and all the circumstances surrounding it at the time of my observation.

Q. Did you take into consideration the reasonable earning capacity of the plant?

A. I made some estimates of earnings of that particular plant, under alternative set-ups.

Q. Did you take into consideration the cost of operation and maintenance?

A. Yes, I explored the actual history; tried to find the cost of operation.

Q. You didn't determine the increased output by more efficient operation of the generating equipment, did you?

A. I gave consideration to it to this extent: I studied the history; I estimated the potential capacity if the plant could operate continuously, and I studied the [1114] actual performance.

Q. Did you investigate the opportunities to increase the output in the reasonably near future?

Mr. Ramsey: Just a minute. May I ask that that question be made more definite? By what means?

Mr. Powell: In what relation? In what particular?

(Testimony of L. E. Kurtichanof.)

Mr. Ramsey: The question does not indicate by what means he proposes to increase the output of power, and I ask that the question be so framed as to include that.

The Court: What you have in mind is whether it is by more efficient operation, or by remodeling, or improvement?

Mr. Ramsey: That is the point exactly, your Honor.

Cross-Examination
(Continued.)

Q. Well, did you consider it by any means?

Mr. Ramsey: Just a minute; objected to as incompetent and irrelevant.

The Court: I'll sustain the objection.

Q. Did you consider the opportunity by enlarging the canal——

Mr. Ramsey: Just a minute——

Q. Do you want me to finish? By removing the obstructions which you have testified to which existed in 1943? [1115]

Mr. Ramsey: Now I object to that as incompetent, irrelevant, and immaterial.

The Court: I presume by obstructions he means the solid rock.

Mr. Powell: The obstructions he had in determining his cross section test.

The Court: He testified to silt obstruction and solid rock. Perhaps you might particularize.

(Testimony of L. E. Kurtichanof.)

Cross-Examination

(Continued.)

Q. Well, first, by removing the silt in the canal?

A. Not specifically. I reasoned from the performance in some such manner as this; the plant has a potential capacity of 2100 kilowatts, which at the outside, if run at 100 per cent load factor for a year, would produce around 18,000,000 kilowatt hours.

Q. At 100 per cent load factor?

A. Yes. The actual performance was——

Q. Do you want the production in what year?

A. Well, the average performance for the period was something else. The maximum production on record was 12 million plus. I also noted that for several months of the year it did not operate for some reason or the other. It seemed to me in some months there was no explainable reason why they should not operate, in view of the fact that they had a power contract which would enable them to sell [1116] all the power they could produce up to 2400 kilowatts, and that the Pacific Power and Light guaranteed to take it. I speculated on why they did not run in those months, and the only reliable reasons I could think of would be, first, that due to freshets in the summer months which reduced the capacity of the plant, and also due to ice conditions in the winter months which prevented the

(Testimony of L. E. Kurtichanof.)

operation of the plant, but I thought that with proper diligence that output could be stepped up to produce an average of about 14 or 14 and a half million kilowatt hours.

Q. Would that include the removal of the rock obstructions in the canal, Mr. Kurtichanof?

A. No, I did not give—those elements were not given consideration in this. I just merely reasoned from the fact that here we had a performance; here, if everything were such that the plant could run continuously, if it was desired to operate continuously, an expectancy of a certain amount could be obtained.

Q. Now, did you investigate the opportunities to increase the power output in the reasonably near future by removing the rock obstructions you have testified to, concerning your cross section?

Mr. Ramsey: Objected to as incompetent, irrelevant and immaterial. [1117]

The Court: Sustain the objection.

Mr. Powell: If your Honor please, I don't want to argue this matter, but just to state that it seems to me the rule that applies to the land and irrigation of the land should apply to the power plant as well.

The Court: The court ruled on this earlier in the trial. I still make the same ruling, that it is not admissible. It requires substantial investment to accomplish it. Exception allowed.

(Testimony of L. E. Kurtichanof.)

Cross-Examination

(Continued.)

Q. You arrived at your percentages of allocation of the value of the power plant to irrigation, did you, Mr. Kurtichanof?

A. I did not, except as I testified earlier.

Q. I don't think I finished my question. Did you arrive at the percentages you gave in your direct examination by dividing the total amount of power used for irrigation by the total amount produced during the twelve years of operation?

A. May I have your question again, please?

Q. You testified that 58 per cent of the capacity of the plant was available for the production of commercial power, didn't you, and 38 per cent was required for pumping?

A. Yes.

Q. Didn't you arrive at the percentages that you've given by taking the total production of power for the years you have testified to, 1932 to '43 inclusive, and divided by the amount of power used for pumping?

A. Yes.

Q. During those years?

A. Yes.

Q. Now, in arriving at your over-all value here, which you have given as \$375,477.00, I assume that you have given us the figure of the fair cash market value in your opinion, is that correct?

A. Yes.

Q. What have you included for intangible value?

A. I have included a total of \$53,700.00.

(Testimony of L. E. Kurtichanof.)

Q. What is that made up of?

A. That is made up of preliminary expense value, going value, and water rights.

Q. Do you have anything for nuisance value, Mr. Kurtichanof?

A. No, not as such; I don't recognize it.

Q. Well, as a matter of fact, now, it is not entirely beyond the realm of possibility that some power plant might not want to buy this plant so it would be removed from the market for possible production of power by others, isn't it? That is done, isn't it?

A. Not that I know of. [1119]

Q. You've never heard of that being done?

A. No.

Q. As a matter of fact, some agencies pay quite a bit more than power companies are worth to control it, don't they.

A. I don't know.

Q. You did not give that any value?

A. No.

Q. Did you ever buy or sell a power plant?

A. No.

Q. Have you included anything for a contractor's fee?

A. That is included in the——

Q. Preliminary expense, or the going value, or the water rights?

A. ——in the unit prices.

Q. In the unit prices?

A. In the unit prices.

Q. What about overhead?

(Testimony of L. E. Kurtichanof.)

A. Overhead has been added to the total, and is included in these over-all figures of reproduction cost.

Q. How much did you add for overhead?

A. I included 15 per cent for general overheads.

Q. And you say Mr. Tinling was low when he included 8 per cent, wouldn't you?

A. I didn't say.

Q. Well, he is, isn't he, if he includes [1120] only 8 per cent?

A. Well, he might have been talking about other overheads.

Q. Is it customary, or do you customarily figure values by including your contractor's fee as part of the cost? A. Yes.

Q. Or unit prices?

A. Where a contractor's fee is involved.

Q. Well, you didn't do that in the other cases you testified in, did you?

A. Yes; the contractor has his own indirect costs, which are his overheads, and they're included in the contractor's over-all costs.

Mr. Powell: I think that's all.

Mr. Ramsey: I think that's all.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Ramsey: The government rests.

Mr. Powell: We have very short rebuttal.

Mr. Ramsey: If the court please, counsel has suggested that for the purpose of completing the record both as to the government's case and as to the District's case, it might be well to stipulate in this proceeding at this time, first, as a part of the government's case, that all of the lands within the boundaries of the Priest Rapids Irrigation District were acquired by the government through direct purchase or through filings of declaration of [1121] taking in this proceeding, civil number 128, United States vs. Alberts, and by direct negotiations where the title was acquired by direct purchase. Prior to the filing of declaration number 99, and as a part of the District's case—well, I think I'll let counsel state that himself.

Mr. Powell: That the water right lands that have been referred to here as being the water right lands designated in the Black Rock Power and Irrigation Company case at the time of the taking here did not exceed 2000 acres under irrigation and in private ownership.

Mr. Ramsey: The government so stipulates as to both matters.

The Court: It is agreed as to both those statements, then?

Mr. Powell: Yes, your Honor.

The Court: The record may show that, then, and the jury may receive it as evidence.

WILLIAM S. WEBBER

called as a witness on behalf of the defendant, in rebuttal, being duly sworn, testified as follows:

Direct Examination

By Mr. Powell:

Q. Your name is W. S. Webber?

A. Yes, William S., I usually sign it.

Q. Did you formerly reside at Hanford? [1122]

A. I did.

Q. How many acres of land did you have there?

A. My son and I were farming about 120 acres.

Q. Where was your property located with reference to the lower end of the Priest Rapids Irrigation canal?

A. I think we were fourth from the end.

Q. About how many miles from the end?

A. Well, it would be under a mile.

Q. Are you familiar with the Hyer property that was testified to yesterday?

A. Yes, I think there is 10 acres lying between that particular 5 acres and one of my son's tracts.

Q. Testimony was given that this property did not receive adequate water during part of the season because it was so near the end of the canal. What is the fact about there being water at the end of the canal, Mr. Webber?

A. Well, I would say it was the mis-use of water rather than the shortage of water.

Q. In what respect?

Mr. Ramsey: If the Court please, that's not a direct answer to the question.

The Court: I don't believe it is.

(Testimony of William S. Webber.)

Mr. Powell: I think that's right, your Honor.

Q. Did you have plenty of water at your diversion?

Mr. Ramsey: Just a minute. I ask that [1123] the witness answer the previous question.

(Whereupon, the reporter read the question, as follows: "Question: Testimony was given that this property did not receive adequate water during part of the season because it was so near the end of the canal. What is the fact about there being water at the end of the canal, Mr. Webber"?)

A. I don't recall any shortage of water that would materially affect any crops.

Q. To what seasons does that apply?

A. Pardon?

Q. What season does that apply to?

A. What season?

Q. Yes. You say there was no shortage of water. It must have been in some season. Was it 1942, or 1943, or 1941? Well, do you recall of any shortage of water in any of those seasons?

A. No, not that would materially affect the crop.

Q. Would that apply to Mr. Hyer's property?

A. Yes.

Q. In other words, do you know, did he get water on his property during the irrigation season?

A. Yes.

Mr. Powell: That's all. [1124]

(Testimony of William S. Webber.)

Cross-Examination

By Mr. Ramsey:

Q. Well, Mr. Webber, it isn't a question of whether he got water on his property during the irrigation season once, or twice, or half a dozen times, or a dozen times, but did he have water available at all times during the irrigation season, on his land? A. I think so.

Q. Well, do you know?

A. Well, of course, I haven't anything, any data, down. Of course, undoubtedly all through the season on any irrigation canal I would say that water was off, maybe, or shut down to kill the moths in the canal, or something of that effect, of that kind, or a break in the canal, or some interruption.

Q. Was there different times during the season that there was not water available in the canal?

A. I don't think there ever was any irrigation, in that particular irrigation system or any other, that was 100 per cent, water available 100 per cent of the time, in any irrigation system.

Q. Well, let's have a direct answer to the question.

The Court: I'm not sure what the question was. Will you read it?

(Whereupon, the reporter read the last previous question, as follows: "Question: Was there different [1125] times during the season that there was not water available in the canal?

A. Yes, that's true.

(Testimony of William S. Webber.)

Q. Was there times for a day or several days that there wasn't water available in the canal for irrigation?

A. Not to materially affect the crop.

Q. Well, now, that's your conclusion. I'm asking now as to the fact itself. Was there times during the irrigation season where for a day or several days there wasn't water available in the canal for irrigation?

A. Well, there was times during the season that there wasn't any water in the canal.

Q. For several days at a time?

A. Well, if you would mean by several days that it would be over four or five days, I would say no.

Q. Not more than four or five days?

A. That's what I would say.

Q. But there was periods of four or five days when there was no water available in the canal?

A. Well, I have no specific record of it, but I would say that that would be the limit, was the limit.

Q. Now, what sort of crops were you growing Mr. Webber, on your lands there, and your son as well?

A. Well, we were growing orchard and fruit crops, and rye, and vetch, and alfalfa. [1126]

Q. What sort of an operation were you carrying on?

Mr. Powell: I think that's not proper cross examination.

Mr. Ramsey: Well, it is preliminary, if the Court please; what might be adequate water.

The Court: I'll overrule the objection.

(Testimony of William S. Webber.)

Cross-Examination

(Continued.)

Q. What sort of an operation were you carrying on on the place there? A. Us?

Q. Yes.

A. General farming and fruit growing, largely.

Q. Dairying? A. No.

Q. How many acres did you have in orchard?

A. Oh, about 50.

Q. And how many acres in alfalfa?

A. Well, not very many; I don't recall just how it was segregated, now. It's been several years since I've been away from the farm.

Q. Considerable acreage of vetch?

A. Well, we grew vetch largely as a cover crop. We did not make it a practice of growing it as a commercial crop, no.

Q. Well, were you growing any other [1127] money crops except fruit?

A. That was largely our main crop, yes.

Q. Well, now, it's a fact, isn't it, Mr. Webber, that the requirements of row crops, vegetables, and crops of that nature, would be entirely different as to the amount of water and as to the intervals on which the water should be applied, from the requirements of acreage devoted to orchards?

A. Yes, orchard would stand a longer period of drought, or no water.

Mr. Ramsey: I think that's all.

Mr. Powell: That's all.

(Whereupon, there being no further questions, the witness was excused.)

BARRY DIBBLE

recalled as a witness on behalf of the defendant, in rebuttal, testified as follows:

Direct Examination

By Mr. Powell:

Q. Mr. Dibble, have you have any experience in de-silting canals? A. Yes.

Q. Where?

A. Principally on the Minadoka Project in Idaho.

Q. And did you work out any system for de-silting canals? A. Yes.

Q. Was it simple? [1128] A. Yes.

Q. What did you do?

A. We used a disc harrow that was stripped of all accessories and dragged it through the canal, stirring up the silt so that it was put in suspension and then carried on with the current.

Q. How did you drag the disc?

A. Well, at that time, which was 25 or 30 years ago, we used horses attached to the disc with a chain, one team on each bank of the canal, sometimes; sometimes with the disc set so one team could pull it.

Q. Is it possible to use that same type of operation in de-silting the power canal at Priest Rapids?

A. Yes.

Q. Would it cost \$40,000.00 to do that?

A. No.

Mr. Powell: That's all.

(Testimony of Barry Dibble.)

Cross Examination

By Mr. Ramsey:

Q. Mr. Dibble, what type of canal was it that you de-silted?

A. That was an irrigation canal.

Q. Yes. Was that a canal dug through rock and gravel, or a concrete surfaced canal?

A. It was dug through rock and gravel.

Q. And how large a canal was it?

A. Oh, there were very many different sizes of canals, up [1129] to 2,000 second feet capacity, and down.

Q. I don't mean in the manner of capacity, because that would be largely dependent upon or to a considerable degree dependent upon the rate of fall found in the canal, wouldn't it? A. Yes.

Q. But what was the dimensions of the canals themselves?

A. Oh, up to 100 foot bottom, down to probably 6 feet.

Q. You mean 100 feet in width at the bottom?

A. Yes.

Q. Carrying a depth of water of what?

A. Oh, as much as 6 or 7 feet.

Q. Didn't you find it a little difficult to handle a disc harrow in 6 or 7 feet of water with a team on opposite sides of the ditch 100 feet wide at the bottom? A. No, it worked very nicely.

Mr. Ramsey: I think that's all.

(Whereupon, there being no further questions, the witness was excused.)

GERALD D. HALL

recalled as a witness on behalf of the defendant, in rebuttal, testified as follows:

Direct Examination

By Mr. Powell:

Q. Mr. Hall, you've heard the testimony concerning the silting of the new channel?

A. I have. [1130]

Q. And I believe it was stated that an item of deferred maintenance of approximately \$40,000.00 was deducted from the value of the canal on that account. What did the new cut-off channel cost to build?

A. The new cut-off channel from the point of junction of the old channel to the river cost \$8500.00.

Q. And is that where the silting was testified to have been?

A. That's where the majority of the silt is.

Q. And state whether or not that silt goes out when the current increases?

A. Yes, it varies according to stage of the river; can be, by increasing the capacity of the canal through the spillway, kept clear.

Q. What, in your opinion, would be the cost of the deferred maintenance, that is, the de-silting of the canal?

A. That would depend on how you would remove it. If the canal were not enlarged and you took it out by drag line it would probably cost about \$2500.00, \$3000.00. If the canal were enlarged to

(Testimony of Gerald D. Hall.)

the spillway the cost would probably be \$500.00 or \$600.00. It would mean stirring up the river so the silt stays awash.

Q. It would be possible, would it not, to stir up the silt and have it carried out by the water?

A. Yes.

Q. And what method is used for that purpose?

A. Well, at some places a float is used, with a centerboard set cross-wise, and that float is controlled by cables set from the bank; centerboard 10 or 12 feet long, and shift it back and forth, starting at the upper end. That depends on whether you can get enough water to give you velocity at the time. If you can, you can use that method.

Q. And then what happens to the silt?

A. Either wash out through the spillway, or through the plant.

Q. Assuming the condition of the canal as testified to by Mr. Kurtichanof, with reference to silt, what in your opinion would be the cost of putting it back into condition as it was in 1942 when it first built?

A. Well, as I said before, if you take it out with a dragline, probably \$2500.00.

Q. That is the highest it would cost?

A. \$2500.00 to \$3000.00.

Q. Would the other method testified to by Mr. Dibble be a system that might be used?

A. Providing you had capacity down to the spillway. There's a bottle-neck there; you cannot get through the same as you can through the two

(Testimony of Gerald D. Hall.)

entrance canals, that is, below the stages of enlargement. At certain stages you could use Mr. Dibble's method. If it was enlarged you could [1132] use the other one.

Q. In other words, the canal as it existed in 1943 was the same as a 6 inch pipe leading into a 3 inch pipe?

A. That's right.

Q. And it slows down the velocity of water above?

A. That's right.

Q. Now, you have stated, Mr. Hall, on your direct examination, that the measurements you took showed 78 second feet of water in the main canal, through the pumps?

A. That is correct, when I tested the pump for efficiency.

Q. Pardon?

A. When the efficiency test was run on the pump.

Q. Reducing that to acre feet, how much does that amount to during the season?

A. That would be in round numbers, 176 a day, and depending on the length of the season, I believe they had a six month season there, about 35,000 acre feet on a 200 day season.

Q. And what would be the loss through evaporation and seepage before deliveries in that particular system?

A. Well, I'd estimate that at about 25 per cent. That is more than our test showed in the canal at one particular spot.

Q. Then was there adequate water to irrigate 2,000 acres?

A. Yes. [1133]

(Testimony of Gerald D. Hall.)

Q. In the year 1942? A. Yes.

Q. And 1943? A. Yes.

Mr. Powell: That's all.

Cross-Examination

By Mr. Ramsey:

Q. This de-silting operation, you propose to agitate the silt in the new entrance or channel cut into the canal, is that the idea?

A. Yes, when you have sufficient volume of water.

Q. Now, by what means do you propose to keep that in suspension for the two miles down to the power house?

A. Wouldn't attempt it; you would try to divert it at the spillway.

Q. Well, in order to divert it at the spillway, you would require sufficient water to be above the level of that spillway, wouldn't you?

A. No, there are openings below the crest of the wall, spillway openings.

Q. Yes, but those openings are considerably below the level of the canal as they existed out there the day the jury viewed it, aren't they?

A. Oh, yes, the bottom of the openings is below the bottom of the canal, opposite the openings.

Q. That you think would operate to remove the silt down as far as the spillway there?

A. That would remove the bulk of it, if the stage of the river was right. You can't do it at low water, because there isn't enough capacity.

(Testimony of Gerald D. Hall.)

Q. But it wouldn't remove it in that portion between the spillway and the canal—I mean between the spillway and the power house?

A. No, but your velocities are higher there, for the same quantity, so it would carry better through there.

Q. Any silt you agitated from there on down would necessarily pass through the wheels down at the plant, wouldn't it?

A. That's right.

Q. Wouldn't that have a very eroding effect on the wheels?

A. Depends on the size. There's been sand and silt going through for years. That's been one of the difficulties. Each year as the water gets low and increases the velocity they have some silt and sand going through the wheels.

Q. That would be small material?

A. Yes; however, they do on governor changes at times get some rocks in; however, that isn't the common operation.

Mr. Ramsey: I think that's all.

(Whereupon, there being no further questions, the witness was excused.) [1134]

Mr. Powell: The defendants rests.

Mr. Ramsey: The government rests.

The Court: I will ask the jury to step out just a moment.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: I didn't want to embarrass anyone, so I thought I would have the jury step out before I asked you how much time you wanted for argument. Anybody might hesitate to ask for a long time with the jury present.

Mr. Ramsey: Frankly, if the Court please, we've got a mass of evidence here, and if argument to the jury is to do any good at all, it should be long enough to cover the mass of evidence, particularly from the viewpoint of the government, because all the witnesses nearly are on the District's side of the case. I don't want to take any longer in argument than is absolutely essential, but I would very much dislike being cut down to less than an hour and a half.

The Court: Would an hour and a half be sufficient?

Mr. Powell: Yes, your Honor, I think it is a little bit more than we will need; however, I'd rather [1135] defer to counsel's wish in that matter.

Mr. Ramsey: I submit that an hour and a half may be more than counsel needs, but he has only to go into the testimony of a single witness, whereas the government has to go into some three or four witnesses on value alone.

The Court: I'm not inclined to restrict argument. The case has lasted a good many days, and there is quite a lot involved. If that is acceptable,

I'll allow an hour and a half. I have another case set for tomorrow. It is not a jury case. I thought I might be able to get started on that by about 3 o'clock if we started at 9:30. Is there any objection to that?

Mr. Ramsey: None at all.

The Court: If we have an hour and a half, and perhaps twenty minutes for the court's instructions, we could get through by 3 o'clock, and I could have some time on the other case. I'll call the jury in, then, if that is acceptable.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: Now, gentlemen of the jury, the case is all through except the argument of counsel and the court's instructions, and that will take perhaps a little [1136] more than half a day. I want to get the case to you as soon as possible, and get it out of the way, as I have another case set for tomorrow, not before a jury. We'll start at 9:30 tomorrow morning instead of 10. Is there anyone who can't conveniently get here at 9:30? If not, then, we'll meet at 9:30 instead of 10. The court will adjourn until 9:30.

(Whereupon, the Court took a recess in this cause until Thursday, February 20, 1947, at 9:30 o'clock a. m.) [1137]

Yakima, Washington, February 20, 1947

9:30 o'Clock A.M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: For the information of counsel in their argument, I will state rather briefly and generally how I propose to instruct the jury in this case.

(Whereupon, the Court advised counsel the instructions that would be given to the jury in this cause.)

Mr. Powell: May I inquire, we have opened and closed the evidence; will be also open and close the argument?

The Court: Yes, that was my understanding at the outset, that since you have the burden of going forward with the evidence in the trial, that you will follow the same procedure in the argument, but I don't believe, it is my view, that that does not or should not alter the burden of proof that the law imposes upon the government, taking the property, to prove what the compensation should be. [1139]

Mr. Powell: There is a lot of evidence here in the record, too, in connection with our respective legal theories, and it is my understanding we will reserve that for your Honor and not for the jury.

The Court: Yes, there are a number of questions involved here. Under the application of the theory

here, the verdict will cover only compensation for that portion of the property not devoted to irrigation purposes. We will have a finding of value, however, as to the rest of the property. Now, it seems to me that is about all we could do with the jury here, and the other questions that will arise as to how to make a credit for the money paid on the bonds, and such as that, it was my view that that should be taken care of when we come to the matter of entering the judgment on the verdict, and I see no reason why, if it is necessary, that additional evidence could be put in at that time, although I don't know what it would be. I think the record is fairly complete now. Have you any ideas on that, Mr. Ramsey?

Mr. Ramsey: Well, you mean as to the last matter brought up?

The Court: Yes.

Mr. Ramsey: I don't see where that would be involved at all in the case so far as the jury is concerned. It is a matter of the court determining its [1140] formula.

The Court: Yes, I think so. It would be confusing to the jury to try to inform them what the claims should be. I have the responsibility of determining what the law is, and I'll submit it in this way, and then of course you make your record by your exceptions and your proposed instructions. Is there anything else, then, before we start the argument? Oh, I'll excuse the alternate after I've instructed.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: You may proceed with the argument.

(Whereupon, Mr. Powell made a closing address to the jury on behalf of the defendant; Mr. Ramsey made a closing address to the jury on behalf of the petitioner, and Mr. Powell made a final address to the jury on behalf of the defendant.)

Whereupon, the Court charged the jury as follows:

The Court: Members of the jury, you have heard the testimony and the argument of counsel and it is now the duty of the Court to instruct you as to the rules of law by which you are to be guided in your deliberations. It is your duty to accept these instructions as the law, and to follow them. You should consider them as a whole [1141] and not place any undue emphasis on any part or portion of them.

In this case, the petitioner, the United States of America, has acquired for public use, as it had a right to do, the properties of the defendants described in the amended petition. It is not disputed that at the time of taking, the legal title to all such properties was vested in the defendant Priest Rapids Irrigation District, and, so far as you are concerned, that defendant is entitled to all of the compensation to be paid for the properties taken. Therefore, for convenience, throughout these in-

structions, I shall refer to the Priest Rapids Irrigation District as if it were the only defendant.

The Constitution of the United States and the Constitution of the State of Washington provide that no private property shall be taken for public use without just compensation being made to the owner. It is your duty, in this case, to determine, under the instructions of the Court and the evidence submitted to you, the just compensation that should be made to the defendant for the taking of the properties involved.

The burden of proof is upon the United States to establish by a fair preponderance of the evidence the just compensation that should be paid. By "burden of [1142] proof" is meant the burden of producing evidence which fairly preponderates over the opposing evidence. The term "fair preponderance of the evidence" means the greater weight of the evidence. It is that evidence which carries the greater convincing power to your minds, regardless of the number of witnesses who may have testified on one side or the other.

Just compensation or property taken for public use includes all of the elements of value that inhere in such property, and corresponds to the full, fair, cash, market value thereof. "Cash, market value" is the amount for which the property would be sold at the time the property was taken in a sale for cash between an informed owner, willing but not compelled to sell, and an informed buyer, willing but not compelled to buy. Therefore, in determining the just compensation to be paid to the owner,

you should take into account all considerations shown by the evidence which you believe might fairly be brought forward and reasonably be given weight in negotiations between such a seller and such a buyer. The question whether or not the owner was willing to sell his property or have it condemned should not be considered by you. An owner may not want to part with his property because of its special adaptability to his own use, but this fact should not be taken into account [1143] in fixing fair, market value. Similarly, you should not consider the need of the property by the United States in determining its market value. The fact that the United States needed the property in no way serves to increase its market value, and consideration of that circumstance has no place in your deliberations.

Frequently, market value is established by actual sales of similar property, currently made in a free and open market. However, as there is not a sufficient number of sales to establish such a value for electrical properties and irrigation systems, in determining the market value of such properties consideration should be given to various factors which have a bearing on the market value. In determining fair, cash, market value, you should give consideration to the estimated cost of reproduction new; the estimated cost of reproduction new, less depreciation; the earnings and the capitalized earnings of the properties; the uses to which the properties were being put; the highest and best use for which they were or might be suitable and available

in the reasonably near future; and all the factors, facts, and things, shown by the evidence which you think such a willing seller and such a willing buyer as I have heretofore described to you would take into consideration in arriving at an agreement as to price. You are not controlled [1144] or bound by one or more of the elements or factors just enumerated to you, nor are you required to give them equal weight or force. It is for you to determine what weight, if any, you give to each and all of such elements and factors.

By "cost of reproduction new" of a property is meant what it would cost to reconstruct, or reproduce, any of the units of the properties existing at the time they were taken, under conditions and at prices for materials and labor prevailing at that time. "Depreciation" is the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence.

Although capitalization of earnings may not be considered by itself as a measure of value of the property, you may consider it as one of the elements which would be taken into account by an informed seller and an informed buyer in arriving at a mutually acceptable price. In any consideration you may give to capitalization of earnings, you are not to assume any rate at which earnings would be capitalized, but you are to determine for yourselves, under the evidence, a rate of capitalization.

You are instructed that in determining the value

of the properties in this case, you must have in mind the date of taking and fix the values as of such date, that is, fix the values of the irrigation properties as of April 1, 1943, and of the power properties as of October 1, 1943.

Because of the peculiar and complex legal problems involved, you will be asked to find separately the value of the property of the defendant devoted and applied to irrigation purposes and the value of its property devoted and applied to purposes other than irrigation at the time it was taken by the United States. The value of the irrigation property will be stated by you in answer to a special interrogatory submitted to you by the Court. The value of the non-irrigation property, only, will be embraced in your general verdict. Later on, I shall give you more detailed instructions on this point.

Testimony has been given in this case by witnesses who are called "experts." The testimony of such witnesses is admitted in cases where the values of properties, such as those involved here, are in issue. An "expert" witness is one who is skilled in any particular matter, or possessed of particular knowledge concerning any such matter, acquired by study, training, observation, or experience. You are not bound by any expert testimony [1146] but it should be considered by you in connection with the other evidence in the case.

At the outset of this trial you were taken to view the properties involved. This was done in order that you might better understand and evaluate the

testimony to be given and also to aid you in coming to a correct conclusion as to the just compensation to be awarded to the owner of the properties. The evidence consists of what you have seen of the properties, as well as of the testimony of the witnesses who have appeared in Court. That which you have seen and that which you have heard from the witness stand are both to be duly weighed and considered.

You are the sole and exclusive judges of the evidence and of the credibility of the several witnesses and of the weight to be given to the testimony of each. In weighing the testimony of a witness you have a right to consider his demeanor upon the witness stand, his apparent fairness or lack of fairness, his apparent candor or lack of candor, the reasonableness or unreasonableness of his testimony, the interest you may believe he feels in the result of the trial, and any other fact or circumstances arising from the evidence which appeals to your judgment as in any way affecting his credibility. You may give to the testimony of each of the witnesses [1147] just such degree of weight as in your judgment it is entitled to receive.

You will be slow to believe that any witness has testified falsely in the case, but if you do believe that any witness has wilfully testified falsely to any material matter, then you are at liberty to disregard the testimony of such witness entirely, except in so far as the same may be corroborated by other credible evidence in the case.

In arriving at your verdict you are not permitted to add together different amounts representing the respective views of different jurors and to divide the total by 12 or by some other figure intended to represent the number of jurors or ideas represented. Such would be a quotient verdict and would be contrary to law and to your oath. Under your oath you are only permitted to return a verdict for that amount which, in your honest judgment under the evidence and these instructions, represents the just compensation to be paid by the petitioner to the defendant.

You are instructed that in your determination of the value of the property, you are not to consider the property as carrying either any benefits or any burdens of the contract between the district and the Pacific Power & Light Company, as to which contract there has [1148] been testimony. The provisions of that contract and testimony regarding it are evidence which you may take into account in determining value, just as other evidence regarding earnings and their capitalization may be considered as one of the elements to be taken into account in arriving at the value of the property. The weight to be given evidence regarding that contract, like the weight to be given other evidence on earnings and capitalization of earnings, is for you to determine.

There have been received in evidence four certified copies of water appropriations which are received for the limited purposes of showing whether the defendant district had, at the dates of taking,

the right to divert from the Columbia River sufficient water for irrigation and power purposes as was required by it, or might be required in the reasonably near future, and you shall consider such water appropriations only in the light of the use being made of them on the dates of taking, or such use as might have been made of them by the district within a reasonable time thereafter.

Under the circumstances and the law as construed and applied by the court your verdict must be limited to a finding of just compensation for only that part of the defendant's properties involved in this action devoted to purposes other than irrigation purposes. First, you [1149] should find and include in your verdict the full, cash, market value of any property of the defendant which you find from the evidence was not in any part, or to any extent, devoted to irrigation purposes. Then, you should include in your verdict also that portion of the power properties of the defendant not devoted to irrigation purposes. In order to do that, you must make an allocation of the value of the power properties of the defendant between irrigation and non-irrigation purposes. You should first find the full, cash, market value of such electric power properties, namely, the power plant with its allied facilities and the power transmission line from the power plant to Coyote Junction. Then you should determine in what fractional part or percentage such power properties were devoted and applied to non-irrigation purposes at the time of taking, or which, in all probability, would have been so applied

within the reasonably near future. You should then include in your verdict that part or percentage of the value which you find from the evidence was so applied and devoted to non-irrigation purposes.

You will be asked to find separately, in answer to a special interrogatory, the cash, market value of that part of the defendant's properties involved in this action which was devoted and applied to irrigation purposes [1150] at the time of taking. This interrogatory finding of value should include the fair, cash, market value of the irrigation works of the district, namely, the pumping plant, the power transmission line from Coyote Junction to the pumping plant, the main and lateral irrigation canals, and that part or percentage of the power plant and the transmission line from the plant to Coyote Junction devoted and applied to irrigation purposes at the time of taking, or that would have been so devoted and applied in all probability within the reasonably near future.

In short, members of the jury, you are to divide and allocate the cash, market value of defendant's properties in accordance with its irrigation and non-irrigation uses and purposes. The non-irrigation value which you find should be included in your general verdict. The irrigation value which you find should be included in your statement of value in answer to the special interrogatory. The sum of these two amounts, the amount of your general verdict and the amount of your answer to the special interrogatory added together, should equal the fair, cash, market value of all of the properties of the defendant involved in this action.

In determining and making your allocation of the value of the defendant's power properties to irrigation [1151] and non-irrigation purposes, you may take into consideration the generating capacity at the time of taking of defendant's power plant, the demands upon the plant for power to pump water to irrigate the lands then under irrigation in the district, or that in all probability would have been under irrigation within the reasonably near future, and the excess of power for commercial sale remaining after such irrigation demands had been met. You may also take into consideration any other pertinent facts and circumstances shown by the evidence, which may aid you in making such allocation.

This being a condemnation case, the State law governs as to the number of jurors required to agree upon a verdict and when ten of your number have agreed upon a verdict, it shall be returned into Court and shall stand as the verdict of the jury. Likewise, only ten of your number are required to agree upon your answer to the special interrogatory submitted by the Court. When you retire to your jury room to deliberate, it will be your duty to select one of your number as Foreman. He will return your verdict when you have agreed upon it and will communicate with the Court, if necessary. You will take with you to the jury room the amended petition for condemnation; the exhibits in the case; the notes which you have taken during the trial; a [1152] blank form of verdict; and a blank form of special interrogatory.

The blank form of verdict, omitting the formal heading, reads as follows:

“We, the Jury in the above entitled cause, find that the just compensation to be paid for the taking of that portion of the properties of the defendant, Priest Rapids Irrigation District, not devoted and applied to irrigation purposes, is \$.”

The form of special interrogatory reads as follows:

“What was the fair, cash, market value at the time of taking of that part and portion of the properties of the defendant, Priest Rapids Irrigation District, taken by the United States, devoted and applied to irrigation purposes? Answer: \$.”

The jury will retire for just a few minutes, and then will come back in again.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: The clerk has prepared an index list of exhibits that I think would be helpful to the jury. Have you any objection to sending it out with the exhibits? [1153]

Mr. Powell: We have no objection to that, your Honor.

The Court: Will you stipulate to that, Mr. Ramsey?

Mr. Ramsey: Yes, your Honor.

The Court: You may now take your exceptions, gentlemen, beginning with the defendants.

Mr. Cheadle: If the Court please, the defendant District takes exception to the Court's refusal to grant instruction number 5. I might state to your Honor that I was attempting to keep an account upon these instructions as your Honor instructed the jury, and if I have misunderstood or not gotten all of your Honor's instructions it is due to my own shortcomings. I believe that instruction number 5 was refused. It is the one which reads as follows: "You are instructed that just compensation may be more or less than the District's investment. The District may have acquired the property for less than it is worth, or it may have paid a speculative or exorbitant price. The value may have changed substantially while the property was held by the District" and so forth. We submit, your Honor, that it was error to refuse that instruction, because it is in accordance with the law as laid down by the Supreme Court of the United States in the Olson case, appearing [1154] in volume 292 of the official United States Reports, and particularly because in this case, in questions and in some of the testimony, there has been placed before the jury what the jury might well imply as a situation in which they were to take into consideration what the District paid.

The Court: I might say, Mr. Cheadle, that I refused that instruction because I thought there was no basis for it in the evidence. There was no evidence of historical book cost or other book cost

of this property, and there was an offer to prove what the District paid for it at the time the District acquired the property. Objection was sustained to that, and it was not admitted.

Mr. Cheadle: That is true, your Honor but there was evidence of the amount of bonds issued for the purpose of acquiring at the receiver's sale.

The Court: Well, there was evidence of the amount of bonds outstanding at the time the District started, but was there any evidence that was all paid to the receiver?

Mr. Cheadle: No, your Honor, but there was evidence as to the amount of bonds which were issued by the District at the time it acquired the property at the receiver's sale. As I recollect, it was \$125,000.00. Moreover, the evidence introduced with regard to earnings [1155] during this period, 1932 to 1942, we submit has the same sort of bearing as evidence as to what the owner paid for the property. Will the Court permit me to group my statement with regard to more than one instruction?

The Court: Oh, yes.

Mr. Cheadle: Instructions 9 and 10, your Honor——

The Court: I might say that I am not trying to interfere with your making exceptions. I thought it might be helpful for you to know the reason I refused to give it; also if counsel for the government thinks any instruction should have been given I would appreciate his comments on that, because we don't want to get error in this record.

Mr. Cheadle: The defendant District takes exception to the Court's refusal to grant instruction number 9 and instruction number 10. Instruction number 9, your Honor, presents the defendant District's position, which has been argued as frequently before this Court as has the government's position. I think I need say nothing further in regard to that. Instruction number 10 we believe comes within the same category, although it is based on the facts as brought out in the trial, namely, that the irrigation properties were taken by the government on April 1, and that therefore, on October 1, when the power properties were taken, there just could not be [1156] any burden upon the power properties to serve the irrigation system of the District. We believe that instruction number 10 is a variation and directed at a particular situation, but is still in the same category as instruction number 9, and for the purpose of saving time, if the Court will permit, we will base our grounds for exception regarding those two instructions on the same grounds as stated in our exception to the Court's rulings at the outset of this trial, and if the Court will permit, I will hand to the reporter a copy of those earlier grounds which were stated in writing and placed in the record.

The Court: I see no objection to that if Mr. Ramsey has no objection. I think a statement of your reasons should appear at this point. You may make them by handing the reporter a copy.

Mr. Cheadle: Very well.

(The following inserted in the record by the reporter at the direction of Court and counsel.)

The defendant Priest Rapids Irrigation District notes exception to the Court's rulings that compensation will not be allowed for the district's so-called irrigation properties and will be allowed only for the district's so-called non-irrigation properties; that part of the value of the district's power properties will be allocated to and included with the district's so-called irrigation [1157] properties and no compensation allowed for said part; that the value of the so-called irrigation properties shall be determined by the jury for limited purposes such as aiding in disposition of the questions arising from payment of the district's bonds with money deposited in the registry of the Court at the time of filing of the declaration of taking, to the exclusion of an award for said irrigation properties; and that the trial before the jury will be conducted accordingly. Said rulings having been announced by the Court in chambers, a procedure agreeable to counsel for both the petitioner and the defendant district, the appropriate occasion for making this exception a matter of record is in connection with the petitioner's objection and the Court's ruling, just made, since they involve the conflicting legal positions of the petitioner and defendant district and the Court's rulings thereon announced in chambers.

This exception by the defendant district is based on the following grounds:

1. The Court's rulings deny to defendant district the constitutional protection of the fifth amendment to the Constitution of the United States of America: "nor shall private property be taken for public use, without just compensation;"

2. The Acts of Congress under the authority of [1158] which the Government instituted this condemnation proceeding, and which Acts of Congress are recited in the original and amended petition in Civil No. 128 and in the amended petition and declaration of taking in Civil No. 128-99, require that there be determination of just compensation for the district's properties which in this condemnation proceeding the Government has taken in the exercise of its power of eminent domain;

3. That proceedings under the Declaration of Taking Act (40 U.S.C. 258a) and its provisions for deposits paid into the registry of the Court and for vesting of title in the Government are merely ancillary to the main condemnation proceeding, and cannot be used as a device for avoiding the basic constitutional and statutory requirement that in this condemnation proceeding there be a judicial determination and award of just compensation for the district's property—a use which the Government has attempted in Civil No. 128 and which the Court's rulings partially allow;

4. The pleadings and record in Civil No. 128 show that in the previous proceedings in No. 128

there has not been any determination or award of just compensation for the defendant district's properties;

5. The "acquisition policy" of the War Department and the Government's contention in support thereof, which [1159] the Court's rulings uphold in part, cannot properly be construed as more than a claim to part or all of the compensation award for the district's properties, which claim should be considered, if at all, after determination of the amount of the award and not as a device for evading determination and award of compensation; and

6. The "acquisition policy" of the War Department and the Government's contentions are based on the Government's construction of state statutes and decisions which are not applicable to the situation of the defendant district, or which at least have never been held applicable, and which this Court's rulings of June 1, 1946, and February 11, 1947, properly leave for State Court determination, as to the district's non-irrigation properties, but as to irrigation properties—erroneously decide in the Government's favor "on the basis of preliminary guesses regarding local law."

The defendant district requests that this exception not be deemed waived or jeopardized in any way during the course of the trial by reason of interrogation of witnesses or introduction of evidence in a manner that is in accordance with the Court's rulings to which this exception is taken.

(End of insertion.)

Mr. Cheadle: The defendant District takes exception [1160] to the Court's refusal to grant instruction number 11. That instruction begins as follows "You are instructed that in arriving at your verdict you should disregard evidence and testimony regarding the relations and transactions after April 1, 1943" and so forth; and your Honor, we take exception also to the Court's refusal to grant instruction number 12, and I believe it may be deemed in the same category as instruction number 11, and reasons stated for both exceptions. Instruction 12 reads "You are instructed that in determining the value of the property you are to disregard the testimony you have heard" and so forth; your Honor, as I heard you instruct the jury I am sure that some of what we have submitted in those requested instructions 11 and 12 was incorporated in your Honor's instructions. However, we feel that we must take exception to the refusal to grant our requested instructions 11 and 12, because in those requested instructions we have deliberately requested rather specific instruction on the law bearing on those matters. It is our position, your Honor, that those matters are irrelevant to the issues in this condemnation case, but because of questions asked by government counsel, some testimony elicited by government counsel, and what appears particularly regarding the power company contract in government counsel's address to the jury, we believe that [1161] it was error to refuse to grant those instructions, and that the jury should have been instructed as we request.

Mr. Powell: If your Honor please, may I add, I think in order to keep our record we should except to your Honor having given an instruction asking that the property be valued separately, so that we may keep our record and theory throughout the case, we want to except on the same ground as the exception previously given as to 9 and 10, given to the reporter and inserted in the record. We feel that all the property should be valued as one, and the District compensated for all.

Mr. Ramsey: If the Court please, I seem to be unable to locate my copy of petitioner's requested instructions 1 and 2.

The Court Yes, you had just two that you proposed.

Mr. Ramsey: Yes; thank you. To the Court's failure and refusal to give to the jury petitioner's requested instruction number 1, as follows: "You are instructed that the petitioner United States of America prior to the filing of declaration of taking 99 had already acquired by direct purchase and by the filing of declarations of taking all of the lands within the boundaries of the Priest Rapids Irrigation District, and was at the time of the filing of declaration of taking 99 the fee owner of all lands within the boundaries of the [1162] said Priest Rapids Irrigation District, and I further instruct you that by the acquisition of the title to all of the lands within the District the petitioner acquired an interest amounting to the full beneficial use to all of the facilities of the Priest Rapids Irrigation District and that said Priest Rapids Irrigation

District retained only the naked legal title" and so forth; I need only say that that defines the government's position in this proceeding, and exception is taken to the Court's failure to give the instruction in line with the record made by the petitioner throughout the trial of the case.

Instruction number 2, "I instruct you that since under declaration of taking 99 the petitioner United States of America took from the Priest Rapids Irrigation District only the naked legal title, not coupled with any beneficial interest in and to the properties of the district in said declaration of taking described, your verdict in this case should be for a nominal sum only"; to the failure to give this instruction, and the refusal to do so, the petitioner excepts for the same reason.

The petitioner United States of America further excepts to the instruction of the Court in which the jury was instructed that the burden of proof in this proceeding rested upon the government. The government's position in that matter is that if the opening and closing of [1163] the case and the order of the case is changed, the burden of proof shifts with it.

To the instruction of the Court to the jury instructing them that in fixing the value, the fair value, of the properties of the district not devoted to irrigation they might capitalize the earnings of the, or rather, the estimated earnings of the district, or of the operation of the plant and the power facilities, the government excepts—I don't think I have made that clear; strike "the government excepts"

—as one element establishing or tending to establish the value of the properties, the government excepts for the reason that any computation or capitalization in this case would necessarily be predicated upon a sum to be determined by the jury at a rate to be determined by the jury, and that it takes them into the realm of pure speculation.

To the instruction of the court instructing the jury that they may consider defendant's exhibits 5, 6, 7, and 8 as the basis for their right to divert and use water for irrigation and for power purposes, the government excepts for the reason that it is the contention of the government that the exhibits cannot serve as the basis for any rights involving water rights at all, and that they do not tend in any way to establish any water right, and therefore could not be considered by the jury [1164] for that purpose.

To the Court's instruction to the jury instructing them that they may and should determine the value of the district's non-irrigation properties by a computation of the per cent or fractional part of the properties which are devoted to strictly non-irrigation use, and a determination of the fair market value of those properties, and an award equal to the percentage or fractional part determined by the jury to be devoted to non-irrigation use, the government excepts as not being a proper formula for determination of fair market value, even under the theory that the case is submitted to the jury.

To the Court's instruction instructing the jury that 10 of its number may return a verdict in this

case, the government excepts as not being provided for or contemplated under Federal procedure.

Mr. Cheadle: If the Court will permit, the defendant district would like to make one comment about one exception taken by the government. If I heard government counsel correctly, the government took exception to your Honor's instruction regarding the burden of proof. Burden of proof I believe in all the previous proceedings in civil number 128 has been upon the government in the many trials. We point particularly to what I understood to be government counsel's reason, or at [1165] least part of his reason for exception, namely that the order of presentation of the case to the jury having been changed, certainly the burden should not be upon the government. Your Honor, it is the recollection of both counsel for the irrigation district that in the court's chambers when your Honor announced that in this trial the burden of proof would be on the government, government counsel himself requested that the defendant district go forward first in the case, because in view of the government's position that there should be nothing more than nominal compensation paid, he would have been in a very peculiar position if he had to put on proof first, and it was at his request, and with no statement, I believe, your Honor, at that time that he would use that reason for attacking your Honor's ruling that the burden of proof would be on the government. It was for that reason only, and without any such attack indicated at that time, the government counsel asked that the district proceed first, and we acceded to his request.

Mr. Ramsey: May it please the Court, the order of proof is not in itself a reason for the exception to the instruction as to the burden of proof resting upon the government; rather the fact that counsel for the district have exercised the right to open and close argument in the case. Counsel is very much in error [1166] when he states that in previous cases where this condition has existed, this order of proof has been changed, that the government has borne the burden of proof. That, as I recollect it, is not the case at all, but in those cases the burden of proof shifted to the defendants in the case.

The Court: My understanding or my recollection of what occurred in chambers is the same as Mr. Cheadle has just stated, substantially that Mr. Ramsey said that since the government's position was that the defendants were entitled only to very nominal damages, that it would be very awkward to open, and he suggested that the defendants go forward with their evidence first. As I recall, I said at that time it was a matter for counsel to determine what order of proof should go forward, that I had no objection to the defendant opening the evidence first, but as I recall, I stated at that time the court would not regard the changing of the order of proof as changing the burden of proof, which I understand is that the government has the burden of showing the just compensation to the land owner. I am still of that view.

Mr. Ramsey: In view of the Court's understanding, and in view of counsel's understanding of that situation, the government withdraws its exception

to the portion of [1167] the Court's instructions instructing the jury that the burden will rest upon the government.

The Court: Is there any further comment to be made here?

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: Perhaps the record should show that the clerk is handing the members of the jury the notes which they have taken under stipulation during the trial.

The alternate juror, Mr. Flanagan, will be excused at this time. Thank you, Mr. Flanagan. Counsel have stipulated that the jury may take with them to the jury room in addition to the things enumerated in the court's instructions an index list of the exhibits, prepared by the clerk.

(Whereupon, the bailiffs were sworn and the jury retired at 3:17 o'clock p.m. to deliberate upon its verdict.)

(Recess, and the court was re-convened at 8:15 o'clock p.m.)

Mrs. Fowles: Your Honor, Mr. Ramsey won't be here.

The Court: All right. In this case we have what is very unusual in Federal Court, a verdict and also an interrogatory in which it is necessary that only 10 [1168] jurors concur. I am not sure whether either side would want to poll the jury. If so, I

am a little doubtful whether it can be done; it would be disclosing the manner in which the two jurors voted if they voted against the verdict. I think, however, the record should show as to what number concurred. Would it be acceptable to counsel if I ask the foreman what number concurred in the verdict and in the interrogatory?

Mr. Powell: Yes, your Honor.

The Court: I'll follow that procedure, then. Bring in the jury.

(Whereupon, the jury returned into Court at 8:17 o'clock p.m.)

The Court: Let the record show that all 12 of the jurors have returned to the courtroom and are seated in their places. Have you reached a verdict, members of the jury?

The Foreman: Yes, sir.

The Court: And how many of your number have concurred in your verdict?

The Foreman: Unanimous.

The Court: And you have returned an answer to the interrogatory?

The Foreman: Well, we separated the power part from the other. [1169]

The Court: You answered that?

The Foreman: Yes.

The Court: And how many concurred in that special interrogatory?

The Foreman: That was unanimous.

The Court: I see. Pass up your verdict and the special interrogatory.

Verdict

“We, the jury in the above entitled cause, find that the just compensation to be paid for the taking of that portion of the properties of the defendant Priest Rapids Irrigation District not devoted and applied to irrigation purposes is \$473,356.00. P. E. Nickerson, Foreman.”

Special Interrogatory

“What was the fair cash market value at the time of taking of that part and portion of the properties of the defendant Priest Rapids Irrigation District taken by the United States devoted and applied to irrigation purposes? Answer: \$365,845.00. P. E. Nickerson, Foreman.”

The Court: The verdict and the special interrogatory and the answer will be received and filed. I will excuse the jury now until Monday morning at 10 o'clock.

(Whereupon, the Court adjourned at 8:20 o'clock p.m.) [1170]

Reporter's Certificate

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the District Court of the United States for the Eastern District of Washington, held at Yakima, Washington, on February 10, 11, 12, 13, 14, 17, 18, 19, and 20, 1947.

That the above and foregoing, consisting of 8 volumes containing pages numbered consecutively 1 to 932 inclusive, contains a full, true and accurate transcript of the proceedings had therein, including all objections and the Court's rulings thereon and exceptions thereto.

Dated this 21st day of May, 1947.

/s/ STANLEY D. TAYLOR
Official Court Reporter

In the District Court of the United States for the
Eastern District of Washington, Southern Di-
vision.

No. 128-99

UNITED STATES OF AMERICA,
Petitioner,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,
a public corporation, et al.,
Defendants.

DEFENDANT PRIEST RAPIDS IRRIGA-
TION DISTRICT'S REQUESTED
INSTRUCTIONS

Comes now the defendant, Priest Rapids Irriga-
tion District and requests that the Court give the
attached instructions to the jury.

MOULTON & POWELL

J. K. CHEADLE,

Attorneys for Priest Rapids
Irrigation District.

Instruction No. 1

You are instructed that when ten of your number
have agreed upon a verdict, the foreman shall sign
it and return it into Court. [1173]

Instruction No. 2

You are instructed that in determining the value
of the properties in this case you must have in mind
the date of taking and fix the values as of such date,

that is, fix the values of the irrigation properties as of April 1, 1943, and of the power properties as of October 1, 1943. [1174]

Instruction No. 3

You are instructed that in fixing just compensation you shall take into consideration all of the evidence which has been admitted. Evidence has been introduced of the reproduction cost new, of the reproduction cost less depreciation and of the capitalization of earnings. All are elements to be taken into consideration in arriving at your verdict but no single one should be considered by you as controlling.

Instruction No. 4

You are instructed that just compensation includes all elements of value that inhere in the property but it does not exceed market value fairly determined. The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future is to be considered, not necessarily as the measure of the value, but to the full extent that the prospect of demand for such use affects the market value while the property is privately held. That value is the amount that in all probability, considering all the circumstances, would have been arrived at by fair negotiations between an owner willing but not required to sell, and a purchaser willing but not required to buy. In determining that amount there should be taken into account all considerations that

fairly might be brought forward and reasonably be given substantial weight in such bargaining. [1176]

Instruction No. 5

You are instructed that just compensation may be more or less than the defendant district's investment. The district may have acquired the property for less than its worth, or it may have paid a speculative and exorbitant price. The value may have changed substantially while the property was held by the district. The returns earned by the property may have been greater or less than interest and other carrying charges. The Government may not confiscate the benefits, or be required to bear the burden, of the district's bargain. The district is entitled to be put in as good a position pecuniarily as if its property had not been taken. It is the property and not the cost of it to the district that is safeguarded by the Federal Constitution. [1177]

Instruction No. 6

You are instructed that there have been received in evidence four certified copies of water appropriations which are received for the limited purpose of showing whether the defendant district had, at the dates of taking, the right to divert from the Columbia River sufficient water for irrigation and power purposes as was required by it, or might be required in the reasonably near future, and you shall consider such water appropriations only in the light of the use being made of them on the

dates of taking, or such use as might have been made of them by the district within a reasonable time thereafter. [1178]

Instruction No. 7

You are instructed that, although capitalization of earnings may not be considered by itself as a measure of value of the property, you may consider capitalization of earnings as one of the elements which would be taken into consideration by the fully informed buyer and seller in arriving at the fair market value. You are further instructed that in any consideration you may give to capitalization of earnings you are not to assume any rate at which earnings would be capitalized, but that you are to determine for yourselves a rate of capitalization. And, I repeat, capitalization of earnings may not be used as a measure of value, but may be considered as one of the elements which may enter into determination of the value of the property. [1179]

Instruction No. 8

You are instructed that in your determination of the value of the property, you are not to consider the property as carrying either any benefits or any burdens of the contract between the district and the Pacific Power & Light Company, as to which contract there has been testimony. The provisions of that contract and testimony regarding it are evidence which you may take into account in determining value, just as other evidence regarding earnings

and their capitalization may be considered as one of the elements to be taken into account in arriving at the value of the property. The weight to be given evidence regarding that contract, like the weight to be given other evidence on earnings and capitalization of earnings, and like the weight of all of the evidence admitted at the trial, is for you to determine. [1180]

Instruction No. 9

You are instructed to determine the value of all of the property of the Priest Rapids Irrigation District described in the amended petition No. 128-99. That covers both the so-called irrigation properties and the so-called power properties. Although evidence bearing on the value of those two classes of district property has been segregated from time to time during the course of the trial, you are instructed to arrive at a verdict in a lump sum amount for all of the property. [1181]

Instruction No. 10

You are instructed that the district's irrigation properties were taken by the Government for military purposes on April 1, 1943, and that it thereupon became impossible for the district to serve the purposes for which it was formed and had operated. There was no obligation on the part of the district after April 1, 1943, to operate the irrigation system and consequently no burden on the district's power properties to furnish irrigation pump power on October 1, 1943, the date of taking of the power properties. Accordingly, you are instructed that it is your duty to determine the value

of the power properties without reference to any obligation to produce and deliver power for irrigation purposes.

Filed February 17, 1947. [1182]

[Title of District Court and Cause.]

PETITIONER'S REQUESTED
INSTRUCTIONS

I.

You are instructed that the petitioner, United States of America, prior to the filing of Declaration of Taking No. 99, had already acquired by direct purchase and by the filing of declarations of taking all of the lands within the boundaries of the Priest Rapids Irrigation District and was, at the time of the filing of Declaration of Taking No. 99, the fee owner of all lands within the boundaries of said Priest Rapids Irrigation District.

I instruct you further that by the acquisition of the title to all of the lands within the District, the petitioner acquired an interest amounting to the full beneficial use to all of the facilities of the Priest Rapids Irrigation District, and that said Priest Rapids Irrigation District retained only the naked legal title not coupled with any beneficial interest to all of the properties of the District.

I instruct you further that under Declaration of Taking No. 99, the petitioner, United States of America, took from the Priest Rapids Irrigation District nothing more than the naked legal title

to the properties of the District, and that the value of said naked legal title was and is only a nominal sum. [1183]

Instruction No. II.

I instruct you that since, under Declaration of Taking No. 99, the petitioner, United States of America, took from the Priest Rapids Irrigation District only the naked legal title not coupled with any beneficial interest in and to the properties of the District in said Declaration of Taking described, your verdict in this case should be for a nominal sum only.

Filed February 18, 1947. [1184]

District Court of the United States, Eastern Division of Washington, Southern Division.

No. 128-99

UNITED STATES OF AMERICA,

Petitioner,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT.

VERDICT

We, the jury in the above entitled cause, find that the just compensation to be paid for the taking of that portion of the properties of the defendant, Priest Rapids Irrigation District, not devoted and applied applied to irrigation purposes, is \$473,-356.00.

P. E. NICKERSON,
Foreman.

Filed Feb. 20, 1947.

[Title of District Court and Cause.]

SPECIAL INTERROGATORY

What was the fair, cash, market value at the time of taking of that part and portion of the properties of the defendant, Priest Rapids Irrigation District, taken by the United States, devoted and applied to irrigation purposes?

Answer: \$365,845.00.

P. E. NICKERSON,
Foreman.

Filed Feb. 20, 1947.

[Title of District Court and Cause.]

STIPULATION

Pursuant to Rule 75(h) of RCP, it appearing that by inadvertent error, or accident, there was omitted, from previous designations of record on appeal in the above cause, the transcript of the oral opinion of the Court given on March 7, 1947 in connection with entry of judgment upon the verdict.

It is stipulated between parties to the above-entitled cause that there be included in the record on appeal to be certified and transmitted by the Clerk of the District Court the transcript of court pro-

ceedings in the above entitled cause had in Yakima, Washington on March 7, 1947.

/s/ BERNARD H. RAMSEY,
Attorney for Appellant
United States of America

MOULTON & POWELL,
/s/ J. K. CHEADLE,
Attorneys for Appellee Priest
Rapids Irrigation District.

[Endorsed]: Filed Aug. 7, 1947.

[Title of District Court and Cause.]

ORAL OPINION OF COURT, 3/7/47

Be it remembered, that the above entitled cause came on before the Honorable Sam M. Driver, Judge of the above entitled Court, at Yakima, Washington, on March 7, 1947, for entry of judgment upon the verdict of the jury; the petitioner United States of America being represented by Bernard H. Ramsey, Special Assistant to the Attorney General, and the defendant Priest Rapids Irrigation District being represented by Charles L. Powell and J. K. Cheadle, its attorneys; whereupon, the following proceedings were had:

(Argument by Mr. Powell and Mr. Ramsey.)

The Court: I might indicate what the Court's view is. It seems to me that we have to solve these problems presented here today in the light of the

situation as it exists, and not what might be the situation if this district were in liquidation in this Court, or if the bondholders were coming in for payment of past due obligations.

The Court has endeavored to apply a formula here that would be equitable and fair to both parties in this very unique and unusual situation that is presented. It is one that was conceived by my predecessor, but I have no disposition to try to avoid responsibility, because it seems to me in a very difficult situation it is just about the most equitable thing that could be done. In this situation we have endeavored to segregate the assets of the District not devoted to irrigation purposes from those devoted to irrigation purposes.

Under the judgment which the Court has accepted here, or the view that the Court has taken of the judgment to be entered, the District is to be compensated directly only for a portion of its property, the portion of its property not devoted to irrigation uses. Ordinarily, of course, in a condemnation case the property owner is compensated for the full cash market value of the property. The theory on which this land-owner is compensated for only a portion of the property is that the government has already in effect paid the equivalent of the value of the irrigation assets of the District in its payment to the individual land-owners within the District. The land is purchased as irrigated lands with the water right attached, that is, with the water right or the duty of water to which the land was entitled by reason of being included in the irrigation district.

It seems to me that under that theory, regardless of what might be true in other situations, that the equitable thing to do is give the District credit for the bond payment out of the value which the jury has found in the special interrogatory for those irrigation properties. It seems to me that in this situation, while it may be said that the government has paid for the value of the irrigation assets of the District in paying the individual land-owners, it has paid them less what might be the bonded indebtedness outstanding against the District at the time the individual tract was purchased or condemned. In other words, I assume and I think the record shows that in these individual land cases the amount of the assessment for bond retirement was shown and the amount of the bonded indebtedness of the District, and obviously a water right of an individual land-owner would be lessened in value directly to the extent of the outstanding bonded indebtedness of the District which served him his water. If it would take \$10.00 an acre to pay off the bonded indebtedness of the District, it seems to me that would lessen the value of the water right and the value of the land with the water right attached to that extent; so it seems to me under the theory which the Court has endeavored to apply throughout this case that the equitable thing is to provide that the value found for the irrigation properties be applied to the payment of money advanced or paid into the registry of the Court and used for the retirement of bonds to the extent it

may be necessary, in view of the fact that the value of the irrigation assets found is greatly in excess of the amount of the bonds.

As to the second question raised here, I think that was decided in the proceedings brought in this court to determine whether or not the action in the State Court should be enjoined. While it is of course the duty of this Court to determine in a condemnation case with the aid of a jury if one is not waived not only what compensation shall be made to the owner of the property taken, but also to determine the persons entitled to take the compensation, here the Court takes the view that the Priest Rapids Irrigation District, although deprived of all its property, is still a legal entity, a municipal corporation under the laws of the State of Washington, and all this Court needs to determine is that the compensation should be paid to that District as a legal entity. The District being a municipal corporation of the State, under the statutes of the State the proper place for liquidation is in the State Courts, and that action already having been started, I think it is proper to provide that the funds ultimately be paid into the State Court in which the District is being liquidated.

I have no doubt that this case will be appealed, and these questions that I'm deciding now won't be difficult for an appellate court to decide, because they are simply questions of law which that Court can decide as well as I can. I hope all the questions will be decided by the appellate court so we won't be left to guess what should be done about this case and the companions case.

Mr. Ramsey: May the record show that the government objects and excepts to the entry of the judgment in this case?

The Court: Yes, all right.

REPORTER'S CERTIFICATE

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the District Court of the United States for the Eastern District of Washington, held at Yakima, Washington, on March 7, 1947.

That the above and foregoing contains a full, true and accurate transcript of the Court's remarks in connection with entry of judgment on verdict of the jury.

Dated this 4th day of August, 1947.

/s/ STANLEY D. TAYLOR,
Official Court Reporter.

[Endorsed]: Filed Aug. 7, 1947.

[Title of District Court and Cause.)

PROPOSED JUDGMENT ON VERDICT

The above entitled action having come on for trial before the undersigned Judge of the above entitled Court on February 10, 1947, the petitioner, United States of America, being represented by Bernard H. Ramsey, Special Assistant to the Attorney General, and June Fowles, Special Attorney, Department of Justice, and the defendant, Priest Rapids Irrigation District appearing by Charles L. Powell and J. K. Cheadle, its attorneys, and no other persons appearing in the trial of said action, and the jury having been duly impaneled and sworn to determine the just compensation to be paid for the taking of the property condemned, and having under order of the Court viewed the properties, witnesses having been sworn, and testimony having been taken, and the jury having been instructed to return its general verdict determining the value of the power properties as of October 1, 1943, and having been requested to answer a special interrogatory determining the value of the irrigation properties as of April 1, 1943, and the jury having returned its verdict finding the power properties to be of the value of \$473,356.00, and having made answer to the special interrogatory determining the irrigation properties to be of the value of \$365,845.00, and

It further appearing to the Court that there has been paid into the registry of the above entitled Court as estimated just compensation for the taking of the full fee simple title of the properties herein-after described, the sum of \$170,500.00, which was

paid into this Court on May 12, 1944, and the Court being duly and fully advised in the law and in the premises,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the [1187] verdict and special interrogatory to the jury finding and determining the just compensation in the sums above set forth be and the same are hereby confirmed and approved, and

It Is Further Ordered, Adjudged and Decreed that the total amount of the compensation, being the full, fair market value of all properties of the Priest Rapids Irrigation District, is as follows:

Irrigation properties as of the
date of taking April 1, 1943. . . . \$365,845.00

Power properties as of the date of
taking October 1, 1943. \$473,356.00

and that the full and total sum of all damages resulting to the persons and parties interested therein by reason of the taking and appropriation by the United States of America of the hereinafter described interests in and to said properties and full compensation for the taking thereof is the sum of \$839,201.00, being the amount fixed by the jury by its general verdict and by the special interrogatory as hereinabove set forth for the condemned interests in said property, and

It Is Further Ordered, Adjudged and Decreed that there be and hereby is vested in the United States of America, petitioner herein, the full fee simple title in and to the following described properties, to wit: [1188]

Parcel PR-1—Tract No. W-2004

Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner on the North boundary of said section; thence East along said North boundary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W. M.

Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway

Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

Parcel D:

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

and also:

Together with all rights of the Priest Rapids Irrigation District, a Washington corporation, to construct and maintain wing dams for power canal for water plant in Columbia River at Priest Rapids, which is immediately adjacent to the lands above described, and also including the right to divert the water of the Columbia River at Priest Rapids for the purpose of developing power upon the lands above described, and also all of those certain head-gates, headworks, wing dams, embankments, concrete power house, wing walls, gates and draft tubes located upon, appurtenant to or used in connection with the above described lands, together with all water rights appurtenant thereto or used in connection with the lands heretofore described. All in Yakima County, Washington.

Parcel PR-2

All presently existing easements and/or rights of the Priest Rapids Irrigation District, a Washington corporation, for the construction, operation, maintenance and patrol of an electric power transmission line running from its power house site located in Parcel PR-1, to its pumping station site located in Parcel PR-3, including all poles, wires and appurtenances. The approximate location of said transmission line is as follows:

That certain 66,000 volt transmission line known as "The Hanford-Priest Rapids Line," including poles, wires, insulators, cross arms, guys, props and hardware, and beginning at the power house located on the land described in Parcel PR-1 in Section 2, Township 13 North, Range 23 East, M. W.; and extending in a Southeasterly direction through Sections 2, 11 and 12 Township 13 North Range 23 East, W. M., to the Southeast corner of Section 12 Township 13 North Range 23 East, W. M.; and then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 24 East, W. M.; then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 25 East, W. M.;

Also that certain branch line known as the "Coyote Stub Line," beginning at a point on the main 66,000 volt Hanford-Priest Rapids Line at the Northeast corner of Section 13, Township 13 North, Range 25 East, W. M., and extending in a Northerly direction along the East line of Sections 12 and 1,

Township 13 North, Range 25 East, W. M.; and then across Section 6, Township 13 North, Range 26 East, W. M., to the Coyote Pumping Station formerly owned by the Hanford Irrigation & Power Company, and which is located upon land hereinafter described in Parcel PR-3 as Tract No. G-452.

All in Yakima and Benton Counties, Washington.

Parcel PR-3—Tract No. G-452

Government Lot Four (4), Section six (6), Township thirteen (13) North, Range twenty-six (26) East, W. M., together with second class shore lands adjoining, in Benton County, Washington, containing 16.72 acres, more or less.

Parcel PR-4

All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation.

Parcel PR-5

All right, title or interest of the Priest Rapids Irrigation District, a Washington corporation, in and to the following described lands, including all canals, ditches, laterals pipe lines, easements, rights of way and appurtenances owned by said Priest Rapids Irrigation District:

Beginning at the Southwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M.; thence East along South line of said Lot 4 to its Southeast corner; thence North along

the East line of said Lot 4 to the Southerly right-of-way line of the Priest Rapids Irrigation District canal right-of-way; thence along said canal right-of-way line through Section 6 in said Township and Range; Sections 31, 32, 33, 34, 27, 26, 25, and 36 in Township 14 North, Range 26 East, W. M.; Section 1, Township 13 North, Range 26 East, W. M.; Sections 6, 7, 8, 17, 16, 21, 28, 27, 26, 35, and 36 in Township 13 North, Range 27 East, W. M.; Section 31, Township 13 North, Range 28 East, W. M.; Sections 6 and 5 in Township 12 North, Range 28 East, W. M., to the right bank of the Columbia River, thence Northwesterly, Northerly, Westerly and Southwesterly up the right bank of said Columbia River to the Northwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M., thence South along the West line of said Lot 4 to the point of beginning, together with second class shorelands adjoining Lot 4 in Section 6, Township 13 North, Range 26 East, W. M., in Benton County, Washington.

also:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner of the North boundary

of said section; thence East along said North boundary line of said section to the West bank of the Columbia River; thence in a Southeast direction along said West bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning; and also,

Lots three (3), four (4), seven (7) and eight (8), and second class shore lands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section two (2), Township thirteen (13) North, Range twenty-three (23) East, W. M.; and also,

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington; and also,

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by

deed recorded in volume 136 of Deeds, Page 418, under Auditor's file No. 41775, records of Yakima County, Washington. All in Yakima County, Washington.

and

It Is Further Ordered, Adjudged and Decreed that the only person having an interest in or to the compensation above fixed is the Priest Rapids Irrigation District, a public corporation, and that there be and hereby is included in favor of the Priest Rapids Irrigation District, a public corporation defendant herein, and against the United States of America, petitioner herein, a deficiency judgment in the sum of \$668,701.00, with interest thereon at the rate of 6% per annum from May 12, 1944, until paid, together with interest from April 1, 1943, on \$365,845.00, to May 12, 1944, and interest from October 1, 1943, to May 12, 1944, at the rate of 6% per annum on \$473,356.00, and

It Is Further Ordered, Adjudged and Decreed that said deficiency judgment, with interest, and the whole thereof, shall be paid into the registry of the Superior Court of the State of Washington, in and for Benton County, to be distributed in liquidation proceedings in said Court for dissolution of Priest Rapids Irrigation District, and that pending the determination by said Superior Court as to the parties entitled to receive the funds comprising said deficiency judgment, with interest, that the proceeds of said judgment shall be held in this Court subject to payments therefrom for the purpose of meeting

expenses of said district in this condemnation action and in the dissolution proceeding upon authority for said payments by said district, approved by said Superior Court and this Court.

Done By The Court this day of March, 1947.

.....

United States District Judge.

Refused March 7, 1947.

SAM M. DRIVER

District Judge.

Filed March 7, 1947. [1192]

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In The District Court Of The United States For
The Eastern District of Washington, Southern
Division

No. 128-99

UNITED STATES OF AMERICA,

Petitioner,

vs.

PRIEST RAPIDS IRRIGATION DISTRICT, a
public corporation,

Defendant.

JUDGMENT ON VERDICT

The above entitled action having come on for trial before the undersigned Judge of the above entitled Court on February 10, 1947, the petitioner, United

States of America, being represented by Bernard H. Ramsey, Special Assistant to the Attorney General, and June Fowles, Special Attorney, Department of Justice, and the defendant, Priest Rapids Irrigation District, appearing by Charles L. Powell and J. K. Cheadle, its attorneys, and no other parties appearing in the trial of said action, and a jury having been duly impaneled and sworn to determine the just compensation to be paid for the taking of the property, condemned, and having under order of the Court viewed the property, witnesses having been sworn, and testimony having been taken, and the jury having been instructed to return its general verdict determining the value of the power properties of the Priest Rapids Irrigation District, less the portion of the value thereof which the jury found was required for irrigation purposes, and pursuant to said instruction the jury having returned its general verdict in the sum of \$473,356.00 as being the value so determined as of October 1, 1943, and the Court having instructed the jury to answer a special interrogatory determining the value of the irrigation properties, including that portion of the value of the power properties found to be required for irrigation purposes, and the jury having returned an answer to said special interrogatory determining the value of said irrigation properties to be \$365,845.00 as of April 1, 1943, and

It further appearing to the Court that there has been deposited in the registry of the above entitled Court the amount of estimated just compensation for the taking of the property hereinafter described,

the sum of \$170,500.00, which said sum was deposited on May 12, 1944, and [1193]

It further appearing to the Court that the sum of \$170,500.00 was paid in liquidation of the bonded indebtedness of the Priest Rapids Irrigation District, which said bonded indebtedness was a lien upon the irrigation properties of the Priest Rapids Irrigation District, and that the deposit of the sum of \$170,500.00 in the registry of the above entitled Court as estimated just compensation for the taking of all of the property of the Priest Rapids Irrigation District shall be a charge against the Irrigation properties only and no other sum shall be paid by the petitioner herein as just compensation for the taking of said irrigation properties, and the Court being duly and fully advised in the law and in the premises,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the verdict of the jury finding and determining the just compensation in the sum above set forth for the power properties of the Priest Rapids Irrigation District be and the same is hereby confirmed and approved; and

It Is Further Ordered, Adjudged and Decreed that the total amount of compensation, including the full and fair market value of the power properties, less that portion of the value thereof devoted to irrigation, as of the date of taking, to-wit: October 1, 1943, and the full sum of all damages resulting to the persons and parties interested therein by reason of the taking and appropriation by the United

States of America of the hereinafter described interests of said properties, and just compensation for the taking thereof is the sum of \$473,356.00, being the sum fixed by the verdict of the jury as hereinabove set forth for the condemned interest in said power properties; and

It Is Further Ordered, Adjudged and Decreed that the value of the irrigation properties of the Priest Rapids Irrigation District as of April 1, 1943, was the sum of \$365,845.00, which said sum is in excess of the bonded indebtedness of the Priest Rapids Irrigation District as of said date, and in excess of the amount deposited in the registry of the above entitled Court by the United States of America, petitioner herein, and paid by the Clerk of this Court pursuant to order of Court, in discharge of said bonded indebtedness, and that said bonds and said amount paid into Court be charged as a lien upon said irrigation properties, and not otherwise, and that there shall be no compensation paid to the Priest Rapids Irrigation District for the taking of said irrigation properties, [1194] but that said bonds and said amount of estimated just compensation deposited in the registry of this Court are adjudged to be liquidated by said irrigation properties; and

It Is Further Ordered, Adjudged and Decreed that there be and hereby is vested in the United States of America, petitioner herein, the full fee simple title in and to the following described properties, to-wit:

Parcel PR-1—Tract No. W-2004

Parcel A:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner on the North boundary of said section; thence East along said North boundary line of said section to the West Bank of the Columbia River; thence in a Southeast direction along said West Bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning.

Parcel B:

Lots three (3), four (4), seven (7) and eight (8), and second class shorelands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section 2, Township thirteen (13) North, Range twenty-three (23) East, W. M.

Parcel C:

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway

Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington.

Parcel D:

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's File No. 41775, records of Yakima County, Washington.

and also:

Together with all rights of the Priest Rapids Irrigation District, a Washington corporation, to construct and maintain wing dams for power canal for water plant in Columbia River at Priest Rapids, which is immediately adjacent to the lands above described, and also including the right to divert the water of the Columbia River at Priest Rapids for the purpose of developing power upon the lands above described, and also all of those certain head-gates, headworks, wing dams, embankments, concrete power house, wing walls, gates and draft tubes located upon, appurtenant to or used in connection with the above described lands, together with all water rights appurtenant thereto or used in connection with the lands heretofore described. All in Yakima County, Washington.

Parcel PR-2

All presently existing easements and/or rights of the Priest Rapids Irrigation District, a Washington corporation, for the construction, operation, maintenance and patrol of an electric power transmission line running from its power house site located in Parcel PR-1, to its pumping station site located in Parcel PR-3, including all poles, wires and appurtenances. The approximate location of said transmission line is as follows:

That certain 66,000 volt transmission line known as "The Hanford-Priest Rapids Line," including poles, wires, insulators, cross arms, guys, props and hardware, and beginning at the power house located on the land described in Parcel PR-1 in Section 2, Township 13 North, Range 23 East, W. M.; and extending in a Southeasterly direction through Sections 2, 11 and 12 Township 13 North Range 23 East, W. M., to the Southeast corner of Section 12 Township 13 North Range 23 East, W. M.; and then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 24 East, W. M.; then in an Easterly direction along the North line of Sections 18, 17, 16, 15, 14 and 13 in Township 13 North, Range 25 East, W. M.;

Also that certain branch line known as the "Coyote Stub Line," beginning at a point on the main 66,000 volt Hanford-Priest Rapids Line at the Northeast corner of Section 13, Township 13 North, Range 25 East, W. M., and extending in a Northerly direction along the East line of Sections 12 and 1, Township 13 North, Range 26 East, W. M.; to the

Coyote Pumping Station formerly owned by the Hanford Irrigation & Power Company, and which is located upon land hereinafter described in Parcel PR-3 as Tract No. G-452. All in Yakima and Benton Counties, Washington.

Parcel PR-3—Tract No. G-452

Government Lot Four (4), Section six (6), Township thirteen (13) North, Range twenty-six (26) East, W. M., together with second class shore lands adjoining, in Benton County, Washington, containing 16.72 acres, more or less.

Parcel PR-4

All water rights and appropriations of water from the Columbia River made or owned by the Priest Rapids Irrigation District, a Washington corporation.

Parcel PR-5

All right, title or interest of the Priest Rapids Irrigation District, a Washington corporation, in and to the following described lands, including all canals, ditches, laterals pipe lines, easements, rights of way and appurtenances owned by said Priest Rapids Irrigation District:

Beginning at the Southwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M.; thence East along South line of Lot 4 to its Southeast corner; thence North along the East line of said Lot 4 to the Southerly right-

of-way line of the Priest Rapids Irrigation District canal right-of-way; thence along said canal right-of-way line through Section 6 in said Township and Range; Sections 31, 32, 33, 34, 27, 26, 25, and 36 in Township 14 North, Range 26 East, W. M.; Section 1, Township 13 North, Range 26 East, W. M.; Sections 6, 7, 8, 17, 16, 21, 28, 27, 26, 35, and 36 in Township 13 North, Range 27 East, W. M.; Section 31, Township 13 North, Range 28 East, W. M.; Sections 6 and 5 in Township 12 North, Range 28 East, W. M., to the right bank of the Columbia River, thence Northwesterly, Northerly, Westerly and Southwesterly up the right bank of said Columbia River to the Northwest corner of Government Lot 4 of Section 6, Township 13 North, Range 26 East, W. M., thence South along the West line of said Lot 4 to the point of beginning, together with second class shorelands adjoining Lot 4 in Section 6, Township 13 North, Range 26 East, W. M., in Benton County, Washington.

also:

Beginning at a point on the East line of Section three (3), Township thirteen (13) North, Range twenty-three (23) East, W. M., 36 feet North of the quarter section corner on said East line; thence North 56 degrees West a distance of 2070 feet; thence North 52 degrees 30 minutes West 2386 feet, more or less, to a point on the North boundary line of said Section 3, which point is $986\frac{1}{2}$ feet West of the quarter section corner of the North boundary of said section; thence East along said North bound-

ary line of said section to the West bank of the Columbia River; thence in a Southeast direction along said West bank of the Columbia River to the East line of Section 3; thence South along the East line of said Section 3 to the point of beginning; and also,

Lots three (3), four (4), seven (7) and eight (8), and second class shore lands of the Columbia River abutting thereon and the Northwest quarter of the Southwest quarter of Section two (2), Township thirteen (13) North, Range twenty-three (23) East, W. M.; and also,

Lots two (2), three (3) and four (4), Section eleven (11), Township thirteen (13) North, Range twenty-three (23) East, W. M., except a right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, page 418, under Auditor's file No. 41775, records of Yakima County, Washington; and also,

Lots three (3) and four (4), second class shore lands adjoining and the Southwest quarter of the Southwest quarter of Section thirty-four (34), Township fourteen (14) North, Range twenty-three (23) East, W. M., less right of way 100 feet in width conveyed to Chicago, Milwaukee and St. Paul Railway Company to which Chicago, Milwaukee, St. Paul and Pacific Railway Company is successor, by deed recorded in volume 136 of Deeds, Page 418,

under Auditor's file No. 41775, records of Yakima County, Washington. All in Yakima County, Washington.

and

It Is Further Ordered, Adjudged and Decreed that the only person having an interest in and to the compensation above fixed is the Priest Rapids Irrigation District, a public corporation, and that there be and hereby is entered against the petitioner, the United States of America, and in favor of the defendant Priest Rapids Irrigation District, a judgment for the sum of \$473,356.00, which judgment shall bear interest at the rate of 6% per annum from October 1, 1943, until paid, and

It Is Further Ordered, Adjudged and Decreed that said deficiency judgment, and the whole thereof, shall be paid into the Superior Court of the State of Washington, in and for Benton County, to be distributed in liquidation proceedings in said Court for dissolution of the Priest Rapids Irrigation District, and that pending determination by said Superior Court as to the parties entitled to receive the funds comprising said judgment with interest, the proceeds of said judgment shall be held in this Court subject to payments therefrom for purposes of meeting the expenses of said Priest Rapids Irrigation District in this condemnation action and in said dissolution proceeding upon authority for said payments by said district, approved

by the Superior Court of the State of Washington, in and for Benton County, and by this Court, and

It Is Further Ordered, Adjudged and Decreed that title to the hereinabove described interests in the above described properties be and the same is hereby vested in the United States of America, petitioner herein, as to the irrigation properties as of April 1, 1943, and as to the power properties as of October 1, 1943, which said title is free and clear of any and all charges, interests, claims, taxes, liens and encumbrances of any kind or character whatsoever.

Done By The Court this 7th day of March, 1947.

SAM M. DRIVER,

United States District Judge.

Presented by:

CHARLES L. POWELL,

Of Attorney for Defendant
Priest Rapids Irrigation
District.

Filed March 7, 1947. [1198]

[Title of District Court and Cause.]

MOTION FOR ORDER AMENDING JUDG-
MENT ON VERDICT BY STRIKING

Comes Now the petitioner, United States of America, and moves the Court for an order herein amending the judgment on verdict entered in this proceeding on the 7th day of March, 1947, as follows: By striking from page 6 of said judgment on verdict all of Paragraph 2 reading as follows:

“It Is Further Ordered, Adjudged and Decreed that said deficiency judgment, and the whole thereof, shall be paid into the Superior Court of the State of Washington, in and for Benton County, to be distributed in liquidation proceedings in said Court for dissolution of the Priest Rapids Irrigation District, and that pending determination by said Superior Court as to the parties entitled to receive the funds comprising said judgment with interest, the proceeds of said judgment shall be held in this Court subject to payments therefrom for purposes of meeting the expenses of said Priest Rapids Irrigation District in the condemnation action and in said dissolution proceedings upon authority for said payments by said district, approved by the Superior Court of the State of Washington, in and for Benton County, and by this Court, and”

upon the grounds and for the reason that said Paragraph improperly directs that the deficiency judg-

ment in this proceeding be paid into the Superior Court of the State of Washington, in and for the County of Benton, instead of into the registry of this court, and further improperly provides for payments to be paid from said sum only upon the approval of said Superior Court of the State of Washington, in and for the County of Benton.

Dated this 12th day of March, 1947.

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

Filed March 13, 1947. [1199]

[Tile of District Court and Cause.]

NOTICE OF HEARING ON MOTION TO
AMEND JUDGMENT ON VERDICT BY
STRIKING.

To: Moulton & Powell, Attorney at Law, Kennewick, Washington, and to J. K. Cheadle, Attorneys for Defendant, Priest Rapids Irrigation District.

You and each of you are hereby notified that the foregoing motion will be called up for hearing and argument before the Honorable Sam Driver, Judge of the above named court, in the courtroom of the Federal Court in the Federal Building at Yakima, Washington, at 9:30 a. m., Friday, March 14, 1947.

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

State of Washington,
County of Yakima—ss.

I, Bernard H. Ramsey, of attorneys for petitioner, United States of America, do hereby certify that I served a duly certified copy of the foregoing motion to amend judgment on verdict by striking and of the notice of hearing thereon upon Moulton & Powell, of attorneys for the defendant, Priest Rapids Irrigation District, by depositing a copy of said motion and said notice in the United States mail in an envelope plainly addressed to Moulton & Powell, Attorneys at Law, Kennewick, Washington, postage prepaid, on the 12th day of March, 1947.

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

Subscribed and sworn to before me this 13th day of March, 1947.

(Seal) LIONEL PUGMIRE,

Notary Public in and for the State of Washington, residing at Yakima.

Filed March 13, 1947. [1200]

[Title of District Court and Cause.]

ORDER AMENDING JUDGMENT AND
DIRECTING SUBSTITUTION OF PARAGRAPH

This Matter having come on regularly in its order to be heard on the motion of the petitioner for an order amending judgment, and the petitioner ap-

pearing by Bernard H. Ramsey, Special Assistant to the Attorney General, and the defendant, Priest Rapids Irrigation District, a public corporation, appearing by Charles L. Powell, one of its attorneys, and the Court having considered the motion and the records and files herein, and having listened to argument of counsel and being duly advised.

Now, Therefore, It Is Hereby Ordered that the motion to amend the judgment on verdict entered on March 7, 1947, be and the same is hereby granted, and the paragraph reading as follows, to-wit:

“It Is Further Ordered, Adjudged and Decreed that said deficiency judgment, and the whole thereof, shall be paid into the Superior Court of the State of Washington, in and for Benton County, to be distributed in liquidation proceedings in said Court for dissolution of the Priest Rapids Irrigation District, and that pending determination by said Superior Court as to the parties entitled to receive the funds comprising said judgment with interest, the proceeds of said judgment shall be held in this Court subject to payments therefrom for purposes of meeting the expenses of said Priest Rapids Irrigation District in this condemnation action and in said dissolution proceedings upon authority for said payments by said district, approved by the Superior Court of the State of Washington, in and for Benton County, and by this Court, and,”

be and the same is hereby stricken from said judgment, and

It Is Further Ordered that there is substituted for said paragraph [1201] the following:

“It Is Further Ordered, Adjudged and Decreed that the judgment, and the whole thereof, shall be paid into this court and remain subject to the orders of this Court until such time as this Court shall order the payment of the same to the Superior Court of the State of Washington, in and for Benton County, for the use and benefit of the Priest Rapids Irrigation District in liquidation proceedings to be maintained in said Superior Court, and”

It Is Further Ordered that said substitution shall be considered the same as though made and entered in the original judgment herein at the time of the signing and filing thereof on March 7, 1947.

Done By The Court this 14th day of March, 1947.

SAM M. DRIVER,
United States District Judge.

Presented by:

CHARLES L. POWELL,
Of Attorneys for Defendant.

Approved as to form:

BERNARD H. RAMSEY,
Special Assistant to the
Attorney General.

Filed March 14, 1947. [1202]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the United States of America, petitioner herein, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the jury verdict returned herein on the 20th day of February, 1947, and from the judgment on verdict and amended judgment on verdict entered thereon on the 14th day of March, 1947, herein.

BERNARD H. RAMSEY,
Of Attorneys for Petitioner,
United States of America.

Copies mailed this 6th day of June, 1947, to Charles L. Powell and J. K. Cheadle, Attorneys for Defendant.

A. A. LaFRAMBOISE,
Clerk.

By THOMAS GRANGER,
Deputy.

Filed June 6, 1947. [1203]

[Western Union Telegraph Form.]

1947 June 6 AM 5:50.

EAD41 Govt NL Pd—Washington D C 5

Bernard H. Armsey

Special Assistant to the Attorney General

512 Miller Bldg.

Reurtel June 4 authority is granted to file notice of appeal in Priest Rapids Irrigation District Case.

A. DEVITT VANECH,

Assistant Attorney General.

Filed June 6, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS

Notice is hereby given that the Priest Rapids Irrigation District, a public corporation, defendant in the above-entitled action, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit (1) from the refusal on March 7, 1947, by the above entitled court to enter the form of judgment on verdict presented on behalf of the Priest Rapids Irrigation District, which form included in favor of said district, and against the United States of America, petitioner herein, a deficiency judgment in the sum of \$668,701.00; and (2) from that part of the judgment on verdict entered in this action on the 7th day of March, 1947, which part ordered, adjudged and decreed that the petitioner, the United States of America, shall pay no other sum as just

compensation for the taking of the irrigation properties of the Priest Rapids Irrigation District other than the sum of \$170,500.00 which was deposited by said petitioner in the registry of the above entitled court as estimated just compensation for the taking of all of the property of said district and which was paid by the Clerk of said court pursuant to order of said court in discharge of the bonded indebtedness of said district, and which part of said judgment ordered, adjudged and decreed that of the value of said irrigation properties of said district, determined by the jury and adjudged by said court to be the sum \$365,845.00 as of April 1, 1943, "there shall be no compensation paid to the Priest Rapids Irrigation District for the taking of said irrigation properties, but that said bonds and said amount [\$170,500.00] of estimated just compensation deposited in the registry of this Court are adjudged to be liquidated by said irrigation properties;" said part of said judgment appealed from being part of the final judgment on verdict entered in this action on March 7, 1947.

/s/ J. K. CHEADLE,

Of attorneys for Appellant Priest Rapids Irrigation District.

Copy served this 6th day of June, 1947, on B. H. Ramsey, Attorney for Petitioner.

A. A. LaFRAMBOISE,
Clerk.

By THOMAS GRANGER,
Deputy.

[Endorsed]: Filed June 6, 1947. [1204]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know all men by these presents: That we, the Priest Rapids Irrigation District, a public corporation, and B. Salvini and J. H. Evett, directors of said district, as principals, cash in the amount of two hundred fifty dollars (\$250.00) having been deposited with the Clerk of the Court in lieu of surety, are held and firmly bound unto the above named petitioner, the United States of America, in the full and just sum of two hundred fifty dollars (\$250.00) to be paid to the said petitioner, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Executed this 5th day of June, 1947.

The condition of this obligation is such that:

Whereas, on the 7th day of March, 1947, in the above entitled action between the above named petitioner, the United States of America, and the above named defendants, Clemants P. Alberts, et al., Priest Rapids Irrigation District, a public corporation, a judgment was entered, which judgment in part ordered, adjudged and decreed that said petitioner shall pay no other sum as just compensation for the irrigation properties of the Priest Rapids Irrigation District other than the sum of \$170,500.00 deposited by said petitioner in the registry of the above-entitled court and paid by the Clerk of said Court in discharge of the bonded indebted-

ness of said district, and said district has appealed to the United States Circuit Court of Appeals for the Ninth Circuit;

Now, Therefore, if said principals shall pay the costs if said appeal is dismissed or said part of the judgment appealed from is affirmed, or such [1205] costs as the appellate court may award if said part of the judgment is modified, then the above obligation to be void; otherwise in full force and effect.

PRIEST RAPIDS IRRIGATION DISTRICT

B. SALVINI and

J. H. EVETT,

Directors of Said District,

By J. K. CHEADLE,

Attorney for Priest Rapids
Irrigation District.

[Endorsed]: Filed June 6, 1947. [1206]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
RECORD AND DOCKET CAUSE ON APPEAL

For cause shown and in the exercise of the discretion of the Court, it is

Ordered that the time to file the record and docket the cause on appeal of the above-entitled matter be and the same hereby is extended to 70 days from the date of the notice of appeal.

Done this 11th day of July, 1947.

SAM M. DRIVER,

United States District Judge.

[Endorsed]: Filed July 11, 1947. [1207]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

1. The district court erred in overruling the petitioner's demurrer to the defendant's amended answer.

2. The district court erred in overruling the petitioner's objection to the introduction of any testimony by defendant as to the value or the cost of any of the properties of the Priest Rapids Irrigation District acquired by the United States through the filing of the declaration of taking in No. 128-99.

3. The district court erred in refusing to instruct the jury to return a verdict for a nominal sum only.

4. The district court erred in entering judgment for defendant in the sum of \$473,356.

5. The district court erred in holding that defendant was entitled to receive compensation for the properties acquired by the United States through the filing of the declaration of taking in No. 128-99.

6. The district court erred in failing to apply the sum deposited as estimated just compensation by the Government toward satisfaction of the judgment entered upon the jury's award.

A. DEVITT VANECH,

Assistant Attorney General.

BERNARD H. RAMSEY,

Special Assistant to the Attorney General, Yakima, Wash.

JOHN F. COTTER,

Attorney, Dept. of Justice,

Washington, D. C.

State of Washington,
County of Benton—ss.

Due and legal service of the foregoing petitioner's statement of points on appeal is hereby acknowledged in Benton County, Washington, this 10th day of July, 1947, by receiving a duly certified copy thereof.

CHARLES L. POWELL,

Of Attorneys for Priest

Rapids Irrigation District.

Filed July 11, 1947. [1208]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

The United States, appellant in the above-entitled cause, designates the following for inclusion in the record on appeal:

Original Petition under War Powers Act, filed February 23, 1943.

Motion for Right of Immediate Possession, filed February 23, 1943.

Order Granting Right of Immediate Possession, filed February 23, 1943.

Amended Petition for Condemnation, filed April 22, 1943.

Motion for Immediate Possession on Amended Petition, filed April 22, 1943.

Order, Granting Right of Immediate Possession, filed April 22, 1943.

Motion of Priest Rapids Irrigation District re sequence of trial, filed May 15, 1943.

Petition of State of Washington to Intervene, filed May 29, 1943.

Order Allowing State of Washington to Intervene, filed May 29, 1943.

Certified copy of letter of Secretary of War dated March 4, 1944, and filed in District Court on May 12, 1944, authorizing and directing Declaration of Taking 99. [1209]

Amended Petition for Condemnation, filed May 12, 1944.

Declaration of Taking, filed May 12, 1944.

Appearance of Priest Rapids Irrigation District, filed August 19, 1944.

Stipulation Fixing Compensation of State of Washington Bonds, filed August 19, 1944.

Judgment Ordering Payment of Bonds to State of Washington, filed August 19, 1944.

Stipulation Fixing Compensation of Priest Rapids Irrigation District Bonds to Fireman's Relief and Pension Board, filed September 19, 1944.

Judgment Ordering Payment of Bonds to Fireman's Relief and Pension Board, filed September 19, 1944.

Stipulation Fixing Compensation for Bonds of Emily Corbett, filed September 29, 1944.

Judgment Ordering Payment of Bonds of Emily Corbett, filed September 29, 1944.

Answer to Amended Petition for Condemnation by Priest Rapids Irrigation District, filed February 12, 1945.

Demurrer to Answer and Cross Complaint of Priest Rapids Irrigation District, filed April 25, 1945.

Memorandum of Court Sustaining Demurrer, filed June 21, 1945.

Order Sustaining Demurrer, filed June 25, 1945.

First Amended Answer of Priest Rapids Irrigation District, filed September 21, 1945.

Demurrer to Amended Answer with Points and Authorities, filed October 24, 1945.

Motion for Leave to Intervene with Complaint in Intervention of C. I. Wright, et ux., filed March 23, 1946.

Petition of Priest Rapids Irrigation District for payment of balance on deposit, filed April 8, 1946.

Order Directing Payment of balance on deposit to Priest Rapids Irrigation District, filed April 8, 1946.

Order Extending Time on hearing of demurrer, filed April 11, 1946. [1210]

Motion for Appointment of Trustee or Receiver and for Restraining Order, filed May 6, 1946.

Order to Show Cause, filed May 6, 1946.

Return to Order to Show Cause, filed May 14, 1946.

Transcript of Court Proceedings on Order to Show Cause, filed June 4, 1946.

Order Denying Motion for Leave to Intervene, filed June 26, 1946.

Order Overruling Demurrer, filed June 26, 1946.

Order Denying Motion for Appointment of Trustee or Receiver and for Restraining Order, filed June 26, 1946.

Order for Jury View, filed February 10, 1947.

Defendant's Requested Instructions, filed February 17, 1947.

Petitioner's Requested Instructions, filed February 18, 1947.

Jury Verdict returned February 20, 1947.

Special Interrogatory returned February 20, 1947.

Judgment on Verdict, filed March 7, 1947.

Motion to Amend Judgment on Verdict, filed March 13, 1947.

Notice of Hearing on Motion, filed March 13, 1947.

Order Amending Judgment on Verdict, filed March 14, 1947.

Petitioner's Notice of Appeal, filed June 6, 1947.

Defendant's Notice of Appeal, filed June 6, 1947.

Defendant's Bond on Appeal, filed June 6, 1947.

Record of proceedings at the trial.

Statement of points upon which petitioner relies.

This designation of the contents of the record on appeal.

/s/ A. DEVITT VANECH,

Assistant Attorney General.

BERNARD H. RAMSEY,

Special Assistant to the Attorney General, Yakima, Washington.

/s/ JOHN F. COTTER,

Attorney, Department of Justice, Washington, D. C.

State of Washington,
County of Benton—ss.

Due and legal service of the foregoing petitioner's designation of record is hereby acknowledged in Benton County, Washington, this 10th day of July, 1947, by receiving a duly certified copy thereof.

CHARLES L. POWELL,

Of Attorneys for Priest
Rapids Irrigation District.

Filed July 11, 1947. [1212]

[Title of District Court and Cause.]

CROSS APPELLANT'S STATEMENT
OF POINTS ON APPEAL

1. The district court erred in ruling that the value of the defendant district's so-called irrigation properties would be determined by the jury only for limited purposes, excluding a deficiency award for said irrigation properties.

2. The district court erred in refusing to admit evidence and in rejecting the offer of proof, offered in the absence of the jury as bearing on legal issues before the court, that the United States in condemnation awards and settlements paid only \$630,960.80 for all of the privately owned lands and improvements within the boundaries of the defendant district.

3. The district court erred in refusing to instruct the jury to return a verdict in the amount of the value of all of the property of the defendant district taken by the petitioner.

4. The district court erred in instructing the jury to value the defendant district's properties separately and to return a verdict in the sum of the value of only the so-called non-irrigation properties.

5. The district court erred in ordering that the petitioner, for the taking of defendant district's irrigation properties, the value of which the jury determined to be \$365,845.00 as of April 1, 1943, shall pay no sum other than the \$170,500.00 deposited as estimated just compensation for all of the property of defendant district.

6. The district court erred in refusing to enter a deficiency judgment for defendant in the sum of \$668,701.00.

/s/ CHARLES L. POWELL,
MOULTON & POWELL,
Kennewick, Washington.

/s/ J. K. CHEADLE,

Attorneys for Cross Appellant Priest Rapids Irrigation District.

[Endorsed]: Filed July 14, 1947. [1214]

[Title of District Court and Cause.]

APPELLEE AND CROSS APPELLANT'S
DESIGNATION OF RECORD

The Priest Rapids Irrigation District, appellee and cross-appellant in the above-entitled cause, designates the following for inclusion in the record on appeal:

Copy of letter of Secretary of War, dated February 18, 1943, and filed in District Court in No. 128 on February 23, 1943, authorizing and directing petition for condemnation.

Affidavit supporting Motion for Right of Immediate Possession, filed February 23, 1943.

Copy of letter of Secretary of War, dated April 12, 1943 and filed in District Court in No. 128 on April 22, 1943, authorizing and directing amended petition for condemnation.

Affidavit supporting Motion for Amended Order Granting Right of Immediate Possession, filed April 22, 1943.

Amended Petition for Condemnation, No. 128-43, as to Tracts D-250, E-286, E-297, E-325, F-365, G-494, P-1291, P-1331, P-1336, R-1471, R-1549, S-1611, S-1632, S-1647, S-1658, filed August 26, 1943.

Transcript of Court Proceedings, October 12, 1943, Vol. IV, p. 420, line 21 to p. 435, line 15, both inclusive.

Transcript of Court Proceedings, encaptioned "U. S. of America v. Clements P. Alberts, et al., T. J. Chalcraft, et al., No. 128"—No. 128-18—had in Court's chambers on April 26, 1944. [1215]

Copy of letter of Secretary of War, dated May 4, 1944 and filed in District Court in No. 128-99 on May 12, 1944, authorizing and directing Declaration of Taking No. 128-99.

Order on Declaration of Taking, filed May 15, 1944.

Exhibits attached to Motion for Appointment of Trustee or Receiver and for Restraining Order, filed May 6, 1946.

Exhibit attached to Return to Order to Show Cause, filed May 14, 1946.

Transcript of Court proceedings in Nos. 128-99 and 128-100, being transcript of the oral opinion of the Court delivered on June 1, 1946 after conclusion of argument upon motions and demurrers beginning on May 15, 1946 and resumed on May 31, 1946, filed June 4, 1946.

Proposed Judgment on Verdict presented by Priest Rapids Irrigation District and Refused by Court, filed March 7, 1947.

Statement of points upon which defendant Priest Rapids Irrigation District relies.

This designation of the contents of the record on appeal.

/s/ CHARLES L. POWELL,
MOULTON & POWELL,

/s/ J. K. CHEADLE,

Attorneys for Cross-Appellant Priest Rapids
Irrigation District.

[Endorsed]: Filed July 19, 1947. [1216]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE

State of Washington,
County of Spokane—ss.

J. K. Cheadle, being first duly sworn, on oath, says: That he is one of the attorneys for the defendant Priest Rapids Irrigation District, appellee and cross appellant in the above-entitled cause; that affiant served "Cross Appellant's Statement of Points on Appeal" and "Appellee and Cross Appellant's Designation of Record", copies of which are attached to this affidavit, by depositing on this 19th day of July, 1947, a copy of each in the post office at Spokane, in the County of Spokane, State of Washington, with postage fully prepaid, directed to Mr. Bernard H. Ramsey, Special Assistant to the Attorney General, Miller Building, Yakima, Washington.

/s/ J. K. CHEADLE.

Subscribed and sworn to before me this 19th day of July, 1947.

[Seal] /s/ JANE A. THOMPSON,
Notary Public in and for the State of Washington,
residing at Spokane.

[Endorsed]: Filed July 19, 1947. [1217]

[Title of District Court and Cause.]

United States of America,
Eastern District of Washington—ss.

CERTIFICATE OF CLERK

I, A. A. LaFramboise, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify the foregoing typewritten pages in three (3) volumes, numbered 1 to 1218, inclusive, to be a full, true and correct copy of so much of the record, papers and proceedings in the above entitled cause as are necessary to the hearing of the appeal therein as called for by the designation of record on appeal filed by counsel for the Appellant and Cross-Appellee, and by the designation of record on appeal filed by counsel for the Appellee and Cross-Appellant, as the same remains on file and of record in my office, and that the same constitutes the record on appeal of the Appellant and Cross-Appellee, United States of America, and of the Appellee and Cross-Appellant, Priest Rapids Irrigation District, from the Judgment on the Verdict of the District Court of the United States for the Eastern District of Washington, to the United States Circuit of Appeals for the Ninth Circuit.

I Further Certify that the fees of the Clerk of this Court for preparing and certifying that portion of the foregoing typewritten record as called for in the designation of record on appeal of the Appellee and Cross-Appellant, Priest Rapids Irrigation District, amount to \$13.10, and the same has been paid in full by Mr. J. K. Cheadle, of attorneys for said Appellee and Cross-Appellant.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Yakima, Washington, in said district, this 7th day of August, 1947.

[Seal]

A. A. LaFRAMBOISE,

Clerk of the United States

District Court.

By /s/ THOMAS GRANGER,

Deputy.

[Endorsed]: No. 11704. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Priest Rapids Irrigation District, a public corporation, Appellee. Priest Rapids Irrigation District, a public corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. In Three Volumes. Transcript of Record. Upon appeal from the District Court of the United States for the Eastern District of Washington, Southern Division.

Filed August 11, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of
Appeals for the Ninth District

No. 11704

UNITED STATES OF AMERICA,

Appellant.

vs.

PRIEST RAPIDS IRRIGATION DISTRICT,

Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF PORTIONS OF RECORD TO BE
PRINTED

The United States of America, appellant in the above-entitled case, adopts the statement of points filed in the district court as the statement of points to be relied upon in this Court and desires that the whole of the record as filed and certified be printed in its entirety.

Respectfully submitted,

/s/ J. EDWARD WILLIAMS,
Acting Assistant Attorney
General.

/s/ JOHN F. COTTER,
Attorney, Department of
Justice, Washington, D. C.

[Endorsed]: Filed August 23, 1947.

[Title of Circuit Court of Appeals and Cause.]

CROSS APPELLANT'S STATEMENT
OF POINTS

The Priest Rapids Irrigation District, cross appellant in the above entitled case, adopts the statement of points filed in the District Court as the statement of points to be relied upon in this Court.

Respectfully submitted,

/s/ J. K. CHEADLE,
MOULTON & POWELL and
J. K. CHEADLE.

[Endorsed]: Filed August 28, 1947.

Vol. 11701

**United States Circuit Court of Appeals
for the Ninth Circuit**

City of Los Angeles, Appellant

vs.
**James Harrison Dwyer, A Person
Known by the Name of "Dwyer", Appellee**

vs.
**James Harrison Dwyer, A Person
Known by the Name of "Dwyer", Appellant**

vs.
James Harrison Dwyer, Appellee

**United States District Court of the District
of Columbia, District of Washington**

vs.
James Harrison Dwyer, Appellant

A. DEWITT PARSONS,

Assistant Attorney General

BERNARD H. BARRY,

Special Assistant to the Attorney General

Yakima, Washington

JOHN F. COFFEY,

Attorney, Department of Justice

Washington, D. C.

INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Questions presented.....	2
Statement.....	2
Specification of errors.....	10
Argument:	
I. By acquiring at fair market value all the lands in the Priest Rapids Irrigation District the United States acquired the beneficial title to the properties held by the District for the owners of land in the District and was entitled to the legal title thereto without a further payment for the benefit of the former landowners.....	10
A. The United States did not cause the former landowners to believe they would receive more than the fair market value of their lands.....	10
B. The United States has already paid the former landowners the fair market value of their lands.....	12
C. The properties of the District were wholly devoted to irrigation purposes and were inseparable from the lands they served.....	14
D. In parting with their lands in the District, the former owners divested themselves of all interest in properties held beneficially by the District for landowners.....	17
E. The Government's liability to the landowners would have been the same if the District-held properties had been taken before rather than after the privately owned lands.....	20
II. In any event the judgment upon the award should have been reduced by the amount of estimated just compensation deposited with the declaration of taking.....	22
Conclusion.....	26
Appendix.....	27

CITATIONS

Cases:

<i>Horse Heaven Irrigation District, In re</i> , 11 Wn. 2d 218.....	18
<i>Seaboard Air Line Ry. v. United States</i> , 261 U. S. 299.....	21
<i>United States v. 111,000 Acres of Land</i> , 155 F. 2d 683.....	25
<i>United States v. Miller</i> , 317 U. S. 369.....	23

Statutes:

Act of March 27, 1942, sec. 201, 56 Stat. 176, 177, 50 U. S. C. sec. 171 (a).....	3
Declaration of Taking Act, sec. 1, approved February 26, 1931, 46 Stat. 1421, 40 U. S. C. sec. 258 (a).....	23
Rem. Rev. Stat. secs. 7526-7530.....	18



**In the United States Circuit Court of Appeals
for the Ninth Circuit**

No. 11704

UNITED STATES OF AMERICA, APPELLANT

v.

PRIEST RAPIDS IRRIGATION DISTRICT, A PUBLIC
CORPORATION, APPELLEE

PRIEST RAPIDS IRRIGATION DISTRICT, A PUBLIC
CORPORATION, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT OF WASHINGTON*

BRIEF FOR THE UNITED STATES, APPELLANT

OPINIONS BELOW

A memorandum opinion of Judge Schwellenbach is found at R. 175-181. An oral opinion of Judge Driver is found at R. 1133-1136. Neither opinion has been reported.

JURISDICTION

This is an appeal from a judgment entered on March 7, 1947 (R. 1147-1158) and amended on March 14, 1947 (R. 1161-1163). Notice of appeal was filed on June 6, 1947 (R. 1164).

The jurisdiction of the district court was invoked under the Act of August 18, 1890, 26 Stat. 316, as amended by the Acts of July 2, 1917, 40 Stat. 241, April 11, 1918, 40 Stat. 418, 50 U. S. C. sec. 171, and section 201 of the Act of March 27, 1942, 56 Stat. 176, 177, 50 U. S. C. sec. 171 (a) (R. 107). The jurisdiction of this Court is invoked under section 128 of the Judicial Code as amended, 28 U. S. C. sec. 225 (a).

QUESTIONS PRESENTED

1. Whether by acquiring all the land in an irrigation district the Government acquired the beneficial interest in the properties held by the district for the owners of land in the district and became entitled to legal title thereto without a further payment for the benefit of the former landowners.

2. Whether in a proceeding under the Declaration of Taking Act the sum deposited as estimated just compensation is to be credited toward satisfaction of the amount awarded as just compensation for the property taken.

STATEMENT

The judgment appealed from requires the United States to pay to the Priest Rapids Irrigation District \$473,356 (the amount found by a jury to be the value of that part of the power properties of the District "not devoted and applied" to irrigation purposes), together with interest at the rate of six percent per annum from October 1, 1943 (R. 1147-1158).¹

¹ On motion of the Government (R. 1159-1160), the judgment was thereafter amended to direct that the award be paid into the court below (R. 1161-1163) and not, as the original judgment di-

The proceeding which culminated in this judgment is the penultimate of a series brought by the United States to acquire the area needed for the Hanford Engineering Project. These commenced on February 23, 1943, when the United States filed in the court below a petition to condemn about 194,000 acres of land (R. 2-7). On the same day, pursuant to section 201, Second War Powers Act, 1942, 56 Stat. 177, 50 U. S. C. sec. 171 (a) the Government asked for and obtained an order entitling it to immediate possession of these lands (R. 10-16). On April 22, 1943, it filed an amended petition which enlarged the area to be taken to about 206,000 acres (R. 16-22). On the same day, the court similarly extended its order of immediate possession (R. 27-32).

Included in the property described in these petitions was all the land within the Priest Rapids Irrigation District.

The District embraced 15,950.39 acres. According to its assessment roll prepared in late 1942, only 3,552.13 of these were privately owned. The State of Washington owned 2,194.83 acres and the United States 38.16. But most of the land—10,165.27 acres—was in the hands of the District (R. 727).

In the hope of procuring private owners for this land (R. 754) the District in January 1939 had given Messrs. Miller and Adams, doing business as the Priest Rapids Development Company, an option to purchase all of it (R. 907, 908). The contract required them

rected (see R. 1157), into the Superior Court for Benson County, Washington.

to pay the District \$5.00 an acre for irrigable land and \$1.00 an acre for that which was nonirrigable. However, the District would not construct additional irrigating facilities. Accordingly, no land could be sold as irrigable unless it could be served from existing facilities or unless the buyer would put in his own well (R. 759, 911-913). The company succeeded in selling 685 acres (R. 893). Most of these sales were made in 1940 and 1941 (R. 925).

In addition, the District held title to a power plant, a pumping plant, transmission lines, a power canal, a main irrigation canal and laterals, and auxiliary properties. The power plant was used to generate electricity for the pumping of water to the lands. However, the District supplied water to only a small part of its land: in 1942, for example, it irrigated only 1,200 acres (R. 345, 416, 820). In consequence, the plant generated much unneeded electricity (R. 1029). This surplus was sold to the Pacific Power and Light Company (R. 345, 568). Over the 11 years beginning with 1932, an average of 55 percent of the power plant's output was so disposed of (R. 1030). The proceeds of these sales were applied on the District's bonded debt and for maintenance of its facilities (R. 413-414).

So much for the history of the District before the United States began to acquire the lands needed for the Hanford Project.

In the interval between the filing of the original petition and May 12, 1944, the Government acquired by purchase and condemnation all the privately owned land within the boundaries of the District (R. 1081).

And it purchased from the Priest Rapids Development Company for \$49,000 the more than 10,000 acres included in the option contract (R. 749, 921-922, 929).

Accordingly, on May 12, 1944, the United States filed an amended petition to condemn the remaining property held in the name of the District (R. 106-118). The petition stated (R. 117-118):

That the real property * * * described * * * constitute [s] all of the operating properties and facilities owned * * * by the Priest Rapids Irrigation District * * *. That petitioner, United States of America, by reason of its ownership of all the real property lying within the boundaries of said * * * District is * * * the equitable owner of the real property * * * described * * *, subject only to the lien of the bonded indebtedness of said * * * District, and said * * * District * * * now holds legal title thereto in trust for the use and benefit of [the] United States of America. That the sum of \$170,500.00 deposited in the registry of this court with the filing of declaration of taking * * * represents a sum which * * * is sufficient to pay and discharge all bonded indebtedness of said * * * District.

As indicated by its petition, the Government simultaneously filed a declaration of taking (R. 119-130) and deposited in the registry of the court \$170,500, estimated to be just compensation (see R. 132). Pursuant to subsequent stipulations, bondholders were paid \$169,850 of this deposit (R. 145, 151, 158), and the District was paid the remaining \$650 (R. 218-219).

On February 12, 1945, the District answered the Government's petition (R. 161-167). It alleged that the properties had a value of \$1,060,685; that between April 17, 1943, and October 1, 1943, they had been taken by the Government, and that thereupon the landowners who had been entitled to receive water became the legal owners of the property. It concluded that \$1,060,685 was just compensation and that this sum, less the \$170,500 deposited with the declaration of taking, should be paid to it for distribution to those who had owned land in the District on February 23, 1943 (the date of the first order granting immediate possession).

The consequent demurrer of the Government (R. 173-174) was sustained by District Judge Schwellenbach (R. 181-182). In connection with his ruling, the judge filed a memorandum opinion (R. 175-181).

This opinion rested upon the assumption that, when the United States paid the individual landowners the value of their lands, it had not quite compensated them for their interests in the property here involved. And, referring to earlier proceedings to ascertain just compensation for privately owned lands, it said (R. 178-179):

The fact is that, in the first case which was tried, the landowner attempted to assert his claim to his proportionate share of the District's assets, the [United States] objected and I ruled against the landowner. * * * The awkwardness and the confusion which would have resulted [from a contrary ruling] was realized by counsel on both sides and dozens of cases have been tried since with the understand-

ing that, at some time, the question of the right of the landowners to their proportionate share of the value of the District assets would be thrashed out.

Nonetheless, the court recognized that the awards to the former landowners had been for the value of their lands. Thus, it said (R. 179-180):

On the other hand, the landowners are not entitled to compensation for that portion of the District assets which was valuable only for irrigation purposes. *In each one of the trials and in all of the appraisals, the value of the separate tracts was based upon the proposition that they were within the irrigation district and had irrigation water available. Verdicts and settlements which have been made in these cases have been substantial. They have been based upon the land valued as irrigated land.* For the owners of the lands now to receive compensation for the District assets which were devoted to irrigation purposes would amount to double compensation. Furthermore, the Government has paid out to the holders of the bonds in the Priest Rapids Irrigation District \$170,500. * * * Clearly it is entitled to offset the amount thus paid out against any claim for compensation for the District assets. [Italics added.]

It came to the following conclusion (R. 180):

It seems to me that what must be done * * * is that the Districts² set up in their answers

² The same contention was made by the Richland Irrigation District whose assets have been likewise taken. Trial of that proceeding has been postponed until there has been a test of the correctness of the ruling in this case.

their contention as to the value of that portion of the assets * * * which is not applicable to irrigation purposes and make claim for that amount after giving credit for the sums the petitioner expended in the payment of District obligations.

Thereafter, the District filed an amended answer (R. 182-190). It alleged that on February 23, 1943, it had title to property "not used exclusively in the delivery of irrigation water to property within the district" of the value of \$847,815 (R. 185). It further alleged that on that date it also owned property used in the operation of its irrigation system of the value of \$182,870, that the bonded debt was a lien on this property, and that the amount deposited by the United States should be credited against the value of these assets (R. 189-190). The United States again demurred (R. 191-192. And see R. 201-205). The demurrer was overruled by Judge Driver who had succeeded Judge Schwollenbach (R. 292).

The case came on for trial before Judge Driver, who adhered to the theory enunciated by Judge Schwollenbach (see e. g. R. 387-390, 702-706, 1017-1021). He instructed the jury that it should award compensation for property which was not "to any extent, devoted to irrigation purposes" and also for "that portion of the power properties of the defendant not devoted to irrigation purposes" (R. 1105). He added (R. 1105):

You should first find the full, cash, market value of such electric power properties, namely, the power plant with its allied facilities and the

power transmission line from the power plant to Coyote Junction. Then you should determine in what fractional part or percentage such power properties were devoted and applied to nonirrigation purposes at the time of taking, or which, in all probability, would have been so applied within the reasonably near future.

In respect of the method of allocation, the court instructed the jury (R. 1107):

* * * you may take into consideration the generating capacity at the time of taking of defendant's power plant, the demands upon the plant for power to pump water to irrigate the lands then under irrigation in the district, or that in all probability would have been under irrigation within the reasonably near future, and the excess of power for commercial sale remaining after such irrigation demands had been met. You may also take into consideration any other pertinent facts and circumstances shown by the evidence, which may aid you in making such allocation.

In addition the jury was asked to find the value of that part of the District's properties used for irrigation purposes which, so the court charged, comprised "the pumping plant, the power transmission line from Coyote Junction to the pumping plant, the main and lateral irrigation canals" and the remaining part of the power plant and the transmission line to Coyote Junction (R. 1106).

The jury found that just compensation for the portion of the power properties not devoted to irrigation purposes was \$473,356 (R. 1131) and that the

value of the properties devoted to irrigation purposes was \$365,845 (R. 1132).

On March 7, 1947, the court entered judgment on the verdict (R. 1147-1158). It directed that the United States pay the District \$473,356 with interest at the rate of six percent from October 1, 1943. It recited that just compensation for the properties devoted to irrigation purposes was \$365,845, but that the Government's obligation in this respect was satisfied by the \$170,500 it had paid for the bonds.

SPECIFICATION OF ERRORS

The statement of the points relied on by the United States on its appeal (R. 1169) may be summarized as follows:

The district court erred:

1. In holding that the District was entitled to receive compensation for the properties to which the District held title. Nos. 1-5.

2. In failing to apply the sum deposited as estimated just compensation by the Government toward satisfaction of the judgment entered upon the jury's award.

ARGUMENT

I

By acquiring at fair market value all the lands in the Priest Rapids Irrigation District the United States acquired the beneficial title to the properties held by the district for the owners of land in the district and was entitled to the legal title thereto without a further payment for the benefit of the former landowners

A. The United States did not cause the former landowners to believe they would receive more than the

fair market value of their lands.—At the outset, the Government would invite the court's attention to that part of Judge Schwellenbach's memorandum opinion which deals with his earlier ruling that an individual landowner could not by reason of his undivided share in the District's assets assert a right to an award in excess of the market value of his property.³ The passage in question has been quoted in the statement (pp. 6-7, *supra*): Conceivably, the judge's remarks in respect of "awkwardness" and "confusion" convey the impression that the Government's objection, which provoked the ruling, was based on expediency rather than principle, that its position simply was that the owner's claim could not be appropriately asserted in that proceeding but should be postponed until this suit and that as a result individual landowners were misled and prejudiced.

In order to dissipate any such impression the Government prints as an Appendix to this brief (pp. 27-31, *infra*) the affidavit of Bernard H. Ramsey, Esq., Special Assistant to the Attorney General, who, since September 23, 1943, has been in charge of the litigation incident to the acquisition of the lands needed for the Hanford Project. The affidavit makes clear the following:

The Government's contention was made known before the first trial involving just compensation for an individual holding was begun. The Government

³ The earlier ruling was made in the first of the proceedings to condemn the property of an individual landowner. The ruling was repeated on April 26, 1944. For a transcript of the proceedings on the latter occasion see R. 100-105.

was of opinion that the issue should be raised in that trial and that the ruling thereon should be tested by an appeal to this Court. And, in order to facilitate such appeal, it arranged to pay for the transcript of testimony in that case. The trial court sustained the Government's contention and refused to admit the evidence of value of the District's assets offered by the landowners. But the landowners did not appeal from the subsequent judgment. Since the Government could not complain of the judge's ruling, it was deprived of the opportunity to establish its correctness.

It is evident, therefore, that the United States was not party to an "understanding" that determination of the issue should be postponed until the present proceeding. On the contrary, as Mr. Ramsey's affidavit demonstrates, it sought to have the matter decided long since. And, of course, nothing done by the United States led any individual owner of land in the District to believe that a part of the just compensation due him remained unpaid.

B. *The United States has already paid the former landowners the fair market value of their lands.*—At this juncture it should also be pointed out that the owners of property in the District received full market value. This fact is made clear by the memorandum opinion of Judge Schwellenbach. As he said (R. 179):

In each one of the trials and in all of the appraisals, the value of the separate tracts was based upon the proposition that they were within the irrigation district and had irrigation

water available. Verdicts and settlements which have been made in these cases have been substantial. They have been based upon the land valued as irrigated land.

Mr. Ramsey's affidavit amplifies the remarks of Judge Schwellenbach. He says (p. 30, *infra*):

In the trial of these tracts, as well as subsequent tracts tried by the Court, the landowners were permitted to show that their lands were irrigated lands, the irrigation district in which they were located, the fact that ample water for irrigation was available, that the facilities of the district were in all respects adequate, any and all special services rendered by the district to the landowners, the per-acre charge imposed upon the land per year for irrigation services, the amount of acreage under the district, the amount of outstanding bonds against the district, *and all other factors which might be legally shown as affecting the value of the premises as between a prospective seller and a prospective buyer.* [Italics added.]

The result of this testimony is demonstrated by the awards made. To quote again from Mr. Ramsey's affidavit (p. 31, *infra*):

Tract No. P-1274, owned by Alex Park, consisted of twenty acres of orchard land improved only with a two-room tenant house, packing shed, a well, and the ordinary irrigation facilities. At the time that possession of this tract was taken by the Government, the cherry crop growing upon the tract had been picked and marketed by the owner. The peach and apricot crops were matured but not harvested. The

trial jury fixed \$30,500 as the fair market value of the twenty-acre tract, inclusive of the fruit crop not harvested by the owner. The other verdicts rendered by trial juries followed much the same pattern.

The highest price fixed by any trial jury upon lands adjoining the irrigation districts, not susceptible of irrigation but otherwise comparable to lands within the districts was \$2.00 per acre.

Thus there can be no doubt that the former land-owners have received in condemnation as much as they would have got from a voluntary sale.

C. The properties of the District were wholly devoted to irrigation purposes and were inseparable from the lands they served.—As has been pointed out pp. 7–8, *supra*) Judge Schwellenbach was of the opinion that the District was entitled to the value of so much of the property to which it had legal title as was “not applicable to irrigation purposes” (R. 179). Judge Driver’s instructions to the jury presumably defined the property Judge Schwellenbach had in mind. So, he instructed it to award to the District that part of the “full, cash, market value” of the generating plant and ancillary facilities that was “devoted and applied to nonirrigation purposes” (R. 1105, and see pp. 8–9, *supra*). This fraction, the jury was further told, was to be determined by considering the demands for power to irrigate (at the time of the taking or within a reasonable time thereafter) and the excess of power remaining available for commercial sale (R. 1107, and see p. 9, *supra*). In short, the jury was instructed to determine what percentage of the total power gen-

erated was sold rather than used, to apply that percentage to the "full, cash, market value" of the generating facilities, and to award the result to the District for the benefit of the former landowners.

In thinking that the District had generating facilities "not applicable to irrigation purposes," Judge Schwellenbach made the fundamental error. There is no basis for this concept. It purported to rest on the fact that the District generated and sold power unneeded for pumping irrigation water. But obviously this circumstance did not operate to divorce any part of the generating facilities from the irrigation project. In the first place, it is to be remembered that these generating facilities—all of them—were designed and intended to supply the irrigation needs of those owning lands in the District. These needs might be increased at any time. In such case they would have to be satisfied by use of additional power. Meanwhile, the excess power could be sold. But, if the District were to fulfill its purpose, the arrangement could not be permanent. Furthermore, the revenues from sales of excess power were used to pay the annual charges on account of bonds and maintenance. The burden on the privately owned lands was correspondingly lessened. The effect was the same as if more lands in the District had returned to private ownership. It is clear that payments by such new landowners would be for irrigation purposes. Payments out of sales revenues, similarly applied, were made for the same object. Certainly, the *source* of the funds is immaterial. Plainly, therefore, the generation and sale of surplus

power by the District was for the purpose of irrigation. It follows that the generating facilities of the District were wholly devoted and applied to that purpose.

The validity of this conclusion is illustrated by consideration of the trial court's effort to make an apportionment of the generating facilities. Necessarily the court went on the theory that, despite payment to the former landowners of the value of their properties, they had retained an interest in the assets of the District. If this were so, that interest must have been severable from the land. Put otherwise, the theory must have been that, prior to the taking, individual landowners could sell lands in the District and retain their interest in part of the generating facilities. This, in the nature of things, was impossible for two reasons.

First, when regard is had for the fact that the proceeds from sales of excess power were applied to discharge the bonds and maintenance charges of the District, it is obvious that no one would buy such an "interest." For he would get no return upon his purchase.

Second, such an interest could not have been identified or in fact valued. This is apparent from the instructions given the jury below. Presumably, it was determining the price which the former landowners as a group and a prospective buyer or buyers would have put upon this interest. As has been pointed out (pp. 14-15, *supra*) this figure was arrived at by appraising the market value of the whole of the generating facili-

ties and applying to that value a percentage derived from a comparison of the use of power for irrigation and the commercial sale of the remainder. In other words, the jury found that a *fraction* of the plant had been retained by the former landowners. Property more elusive in character can scarcely be imagined. It could not be identified or segregated; it was a part of each of the structures and of each piece of the equipment used for generating and transmitting power. And, of course, the interest of each landowner of the group in this fraction was even more derivative; it depended on the relation between the number of acres he owned and the total number of privately owned acres.

It is highly fanciful to suppose that a landowner would try to separate from the land—and retain—such an interest in this aggregate of structures, that anyone else would want the land subject to such imponderables, or that a prospective seller and buyer would embark upon an enquiry like that which engaged the jury in this case.

In the light of these considerations, there can be no escape from the conclusion that, as the Government contends, the interest in the generating facilities of the District is appurtenant to the land, incapable of separate valuation and consequently taken into account in fixing the selling price of the land.

D. *In parting with their lands in the District, the former owners divested themselves of all interest in properties held beneficially by the District for landowners.*—If anyone lacking the power of eminent

domain had purchased the 3,552.13 acres individually owned in the District, none would doubt that the purchaser had *ipso facto* acquired all the assets of the District and that the former owners had lost all their interest in the same. Yet, notwithstanding the United States, possessing that power, has acquired all the lands in the District (and paid the former owners the full market value thereof), the court below has held it would have to pay an additional amount for their benefit. The error of this unjust ruling is made manifest by the decision of the Supreme Court of Washington in *In re Horse Heaven Irrigation District*, 11 Wn. 2d 218, 118 P. 2d 972 (1941).

That case may be summarized as follows:

The Horse Heaven Irrigation District has been "disorganized" pursuant to Rem. Rev. Stat. secs. 7526-7530. At the time of dissolution, the greater part of the land had passed to the District through foreclosure of liens for unpaid bond assessments. This land was claimed by the owners of the land remaining in private ownership. The claim was contested by the former owners; they contended that it should be divided among all who had paid assessments during the life of the District. Section 7530, Rem. Rev. Stat., prescribed the method of distribution. The court observed (11 Wn. 2d at p. 227), that if the section were given the construction advanced by the assessment payers—

the result may well be, so far as the *property holders* of the irrigation district are concerned in the distribution of the assets of this dissolved district, that those assets will be dis-

tributed to persons who are not owners of the assets of the district; in other words, their property will be taken from them without due process of law.

For, as the court went on to say (p. 227) :

An irrigation district is a corporation which * * * owns and uses its property in a strictly proprietary capacity for the primary benefit of the owners of land included within the district. With the acquisition as owner of land in an irrigation district, that owner immediately acquires an interest in all property of that district. When the district ceases to be a district, the interest of that owner is as definite and certain as is the interest of a shareholder in an ordinary corporation.

Accordingly, the court held that distribution should be confined to those who owned land in the District at the time it was dissolved.

As the cited decision states: "With the acquisition as owner of land in an irrigation district, that owner immediately acquires an interest in all property of that district." So here, by each acquisition of land in this District the United States immediately acquired an interest in the assets of the District. By the same act and at the same time the former owner necessarily was divested of his interest in those assets. And when finally the United States acquired *all* the privately owned land in the District and all of the former owners in consequence had been divested of their respective interests in the District's assets, the United States became the sole party having an interest in the District's property. Having acquired the

complete interest, it was in fact the owner. Being the owner it was entitled to legal title to the property without paying any additional amount. The holding below that the United States must pay a further sum for the benefit of the former landowners is in effect a holding that the property should be distributed among those who—in the words of the Supreme Court of Washington—“are not owners of the assets of the district.” It is clearly wrong.

E. The Government's liability to the landowners would have been the same if the District-held properties had been taken before rather than after the privately owned lands.—In acquiring the privately owned lands before it sought legal title to the property held by the District, the United States adopted the method most calculated to insure justice and prevent the unnecessary expenditure of time and money. Under such a course the landowners were individually compensated by payment of the full market value of their property instead of being compelled to wait for their aliquot shares of the assets of an irrigation district about to become defunct. And—except for the rulings of the trial court now under review—there would have been no occasion for undertaking the lengthy, costly process of evaluating the generating plant and auxiliary structures of the District.

Nonetheless, Judge Schwellenbach seemed to believe that, if the Government had reversed the order of taking and so first condemned the District-held property, it would have been compelled to pay the value of that property and in addition the amounts it has paid

for the privately owned lands (see R. 177). There was no basis for this belief.

For example, if the Government had condemned the District property subject to its obligations to the privately owned land, no payment of money would have been made. The constitutional requirement of just compensation "means substantially that the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken." *Seaboard Air Line Ry. v. United States*, 261 U. S. 299, 304 (1923). Extinction of the bare legal title of the District would not have altered its pecuniary position. Nor would the landowners have lost anything: They would still receive necessary power and have the revenues derived from surplus sales applied for their benefit. Accordingly, their lands would continue to be worth as much as before. And when the Government had condemned them, it would have paid for them as irrigated lands. In other words, the measure of compensation would be the same as that for which the Government now contends.

If, however, the District property had been taken freed from its obligations to the privately owned lands, the Government would have been required to pay its value. But in that event the privately owned lands would have been no longer irrigable and would have lost most, if not all, of their value. And the Government's pecuniary liability to their owners would have been correspondingly reduced. Thus, while the total which the Government would have to pay might—and in the nature of things, almost

certainly would—be more or less than the amount here paid for the lands, the difference would result from the varying judgments of juries and not because just compensation was differently measured.

It is submitted, therefore, that by virtue of its acquisition of the privately owned lands in the Priest Rapids Irrigation District the United States acquired the beneficial title to the properties held by the District and was entitled to the legal title without further payment.

II

In any event the judgment upon the award should have been reduced by the amount of estimated just compensation deposited with the declaration of taking

The jury found that “the just compensation to be paid for the taking of that portion of the properties of the * * * District not devoted and applied to irrigation purposes is \$473,356.00” (R. 1123). When it filed the declaration of taking, the United States had deposited as estimated just compensation \$170,500. Nonetheless the judgment appealed from, directs the United States to pay the District \$473,356, with interest at the rate of six percent from October 1, 1943, until paid (R. 1157).

Even under the trial court’s theory of allocation of values, this calculation of the judgment was clearly wrong. Despite the Declaration of Taking Act, it ignores the purpose and function of the deposit of estimated just compensation and it contravenes the provision of that Act declaring the manner of judgment to be entered in cases in which a declaration of

taking is filed and a deposit made of estimated just compensation.⁴

The purpose and function of the deposit has been aptly put by the Supreme Court. It has said: "When the declaration is filed the amount of estimated compensation is to be deposited with the court, to be paid as the court may order 'for or on account' of the just compensation to be awarded the owners." *United States v. Miller*, 317 U. S. 369, 381. So here, the \$170,500 was deposited by the United States "for

⁴ Section 1 of the Declaration of Taking Act, approved February 26, 1931, 46 Stat. 1421, 40 U. S. C. sec. 258 (a), provides in part:

"Upon the filing of said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

"Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency."

or on account” of the \$473,356 awarded the District. In entering judgment for \$473,356, the court below has failed to take the deposit into account—and so ignored the Declaration of Taking Act.

And the Act is equally explicit as to the judgment which is to be entered when the award exceeds the deposit. It provides: “If the compensation finally awarded in respect of said lands * * * shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the *deficiency*.” [Italics added.] So here, the court below was directed to enter judgment for the difference between \$473,356 and \$170,500. In entering judgment without regard for the difference it has not followed the Declaration of Taking Act.

Instead, the judgment purports to make the \$170,500 a “charge against the Irrigation properties only” and goes on to say that “no other sum shall be paid * * * for the taking of said irrigation properties” (R. 1149). And in an opinion delivered orally on the occasion of entering the judgment (R. 1133–1136) the trial judge said that since in the cases trying the value of the individually owned lands evidence of the amount of the District’s bonded debt had been submitted he was of opinion that the awards in each of the cases had been for the market value of the land *minus* its share of the debt. Thus, as the Government understands the trial court, it was the latter’s view that the judgments in closed cases were too low and that (although they had not been appealed from) the present proceeding with its de-

posit of \$170,500 afforded an opportunity to redress the balance.

The United States cannot concur in the idea that evidence as to the size of the District's debt reduced the aggregate awards to private landowners by the same amount. But the correctness of that speculation is immaterial here. For the filing of this declaration of taking and the accompanying deposit of the \$170,500 did not reopen these earlier cases. See e. g. *United States v. 111,000 Acres of Land*, 155 F. 2d 683, 685, *et seq.* (C. C. A. 5, 1946). On the contrary, this deposit was made "for or on account" of whatever award might be made in this proceeding. It could not be diverted to other purposes. And, in making other use of it, the trial court erred.

The error is illustrated by supposing that, instead of depositing \$170,500 for the bondholders of the District, the United States had deposited—as would have been consistent with its position—one cent. In that event, it is supposed that the trial court would not have troubled to assign this trifle to the "irrigation properties." Or, had it done so, the United States would not have complained. Neither would the court have had any basis for entering judgment against the United States for more than \$473,356. Yet for all purposes the United States, according to the judgment below, is in no better position than if, instead of \$170,500, it had deposited one cent. Something has turned out badly. Obviously, \$170,500 cannot be so dissipated. It should have been applied to reduce the judgment entered on the award.

It is submitted, therefore, that in any event the judgment should be reversed with directions to reduce its amount by \$170,500.

CONCLUSION

For the foregoing reasons, it is submitted that the judgment of the district court should be reversed and the cause remanded with directions to enter a judgment for a nominal amount or, in any event, for an amount which will take into account the sum deposited as estimated just compensation.

Respectfully,

A. DEVITT VANECH,
Assistant Attorney General.

BERNARD H. RAMSEY,
Special Assistant to the Attorney General,
Yakima, Washington.

JOHN F. COTTER,
Attorney, Department of Justice,
Washington, D. C.

FEBRUARY 1948.

APPENDIX

STATE OF WASHINGTON,
County of Yakima, ss:

I, Bernard H. Ramsey, being first duly sworn, on oath depose and say: That I am a Special Assistant to the Attorney General assigned to duty with the Lands Division of the Department of Justice, and in such capacity I am now, and have been since September 7, 1943, in charge of the work of the Department of Justice for the acquisition of lands by condemnation in the Eastern District of Washington; that included in said acquisitions was and is the case of *United States v. Clements P. Alberts et al.*, Civil No. 128; that in this case, and on the 15th day of May, 1943, the Priest Rapids Irrigation District filed a motion in the District Court of the United States for the Eastern District of Washington in the case of *United States v. Clements P. Alberts et al.*, for an order of the Court requiring the Government to first file its declaration of taking against the properties and assets of the Priest Rapids Irrigation District, and first try out the issue of the value of the district's properties prior to the trials for the purpose of determining the value of privately owned lands within the Priest Rapids Irrigation District; that on May 28, 1943, the State of Washington, as the holder of the bonds of the Priest Rapids Irrigation District, moved the Court for leave to intervene and join in this motion; and that on May 29, 1943, the Court entered an order permitting the State of Washington to intervene in the proceeding for that purpose.

That on this issue of sequence of trials, extensive briefs were filed, both by the attorneys for the district and by the Government, and that through said briefs the Government fully and fairly set forth its position and its contention that with the acquisition of the privately-owned lands within the district the Government would acquire, as a matter of law, all of the equitable rights of the former owners in and to the district properties and facilities and would acquire the legal title thereto upon the dissolution of the district. The Government further set forth its position and contention that if the Government first acquired all of the facilities of the district, it would thereby deprive the lands within the district of all water rights and facilities for irrigation and would thereby convert the privately-owned lands within the district from irrigated agricultural land to desert lands of purely nominal value, and that the value of the privately owned lands could then only be fixed upon the basis of dry desert grazing land.

That on July 17, 1943, Judge Schwellenbach, in a memorandum letter addressed to Mr. Connelly, United States Attorney, a copy thereof being transmitted to Moulton & Powell as attorneys for the district, stated:

I am preparing this sketchy memorandum to be used in the event Mr. Littell should come before I return. In that event, I would like to have a meeting with Ramsey, Crowley and yourself on one side, and Moulton & Powell on the other. In reference to the motion submitted by Moulton & Powell urging that a hearing be held to ascertain the value of the assets of the irrigation district prior to the trials of the various cases involving the individual tracts of land, as you know, it was impossible for me to get to the questions of this motion until Thursday. I had anticipated fully considering the motion before leaving. However, that

seems to be impossible, and, as I go into it, I feel it impracticable. The motion assumes that the Government will condemn the various assets of the irrigation district. As I read the briefs, it would seem that this assumption is erroneous. It appears to me that the Government takes the position that these assets go with the land, and that as the Government has acquired by condemnation all of the land in the district it then becomes the owner of the dam and power installations, the water rights and any other assets. It seems to me that the Government contends that when that point has been reached there would be no necessity for any condemnation against the assets of the district.

That the Court overruled the motion of the Priest Rapids Irrigation District to require the Government to first proceed against the district properties, and the trial of the first of the lands in private ownership was had in October, 1943; that numerous conferences were held between Court, counsel for the district and Government counsel prior to these trials, and that it was assumed by all that the cases would be appealed to the Ninth Circuit Court of Appeals on the refusal of the Court to permit the landowners to introduce evidence as to the alleged cash value of the assets of the district; that the Court felt that this legal question should be determined by an appropriate appeal before the trial of the very large number of individually owned tracts involved in this proceeding; that the Department of Justice concurred with the Court upon this matter, and authority was obtained from the Attorney General to pay for the transcript of testimony in the proceeding, as well as other incidental costs upon appeal, in order to relieve the defendants of these costs; that a complete record was made in this proceeding which involved Tracts No. L-903, P-1274, P-1336 and Q-1425, Ernest H. Dietrich, Alex Parke, C. I.

Wright and Winfield F. Show being the owners of said tracts. The record of the trial was voluminous since all of the defendants' offers of proof were made a part of the record. However, no appeal was ever taken.

In the trial of these tracts, as well as subsequent tracts tried by the Court, the landowners were permitted to show that their lands were irrigated lands, the irrigation district in which they were located, the fact that ample water for irrigation was available, that the facilities of the district were in all respects adequate, any and all special services rendered by the district to the landowners, the per-acre charge imposed upon the land per year for irrigation services, the amount of acreage under the district, the amount of outstanding bonds against the district, and all other factors which might be legally shown as affecting the value of the premises as between a prospective seller and a prospective buyer. The ultimate question of value of the properties was established by expert value witnesses who stated their opinion as to the fair market value of the property as of the date of the filing of the declaration of taking or the actual taking over of the possession of lands by the Government, whichever occurred earlier. The landowners were further permitted to show the general rise in value of farm lands between February 23, 1943, the date of the filing of the War Powers Petition, and the date on which the declaration of taking was filed or the date when the Government took physical possession of the lands. Property owners were also permitted to show crops growing upon the property, the state of maturity of the crops, and the market value of such crops on the date of the filing of the declaration of taking or the taking of actual physical possession. Trial juries were further instructed that they should take into consid-

eration the rise in the value of farm lands between February 23, 1943, and the date of the filing of the declaration of taking or the taking of actual physical possession by the Government, and that they should also include in their verdicts any value added to the lands by the maturing or the matured crops growing thereon.

Your affiant further states that, in his opinion, the verdicts of the juries in these cases amply demonstrated that the juries did have in mind and did consider all of the elements of value covered by the Court's instructions. Tract No. P-1274, owned by Alex Parke, consisted of twenty acres of orchard land improved only with a two-room tenant house, packing shed, a well, and the ordinary irrigation facilities. At the time that possession of this tract was taken by the Government, the cherry crop growing upon the tract had been picked and marketed by the owner. The peach and apricot crops were matured but not harvested. The trial jury fixed \$30,500 as the fair market value of the twenty-acre tract, inclusive of the fruit crop not harvested by the owner. The other verdicts rendered by trial juries followed much the same pattern.

The highest price fixed by any trial jury upon lands adjoining the irrigation districts, not susceptible of irrigation but otherwise comparable to lands within the districts, were \$2.00 per acre.

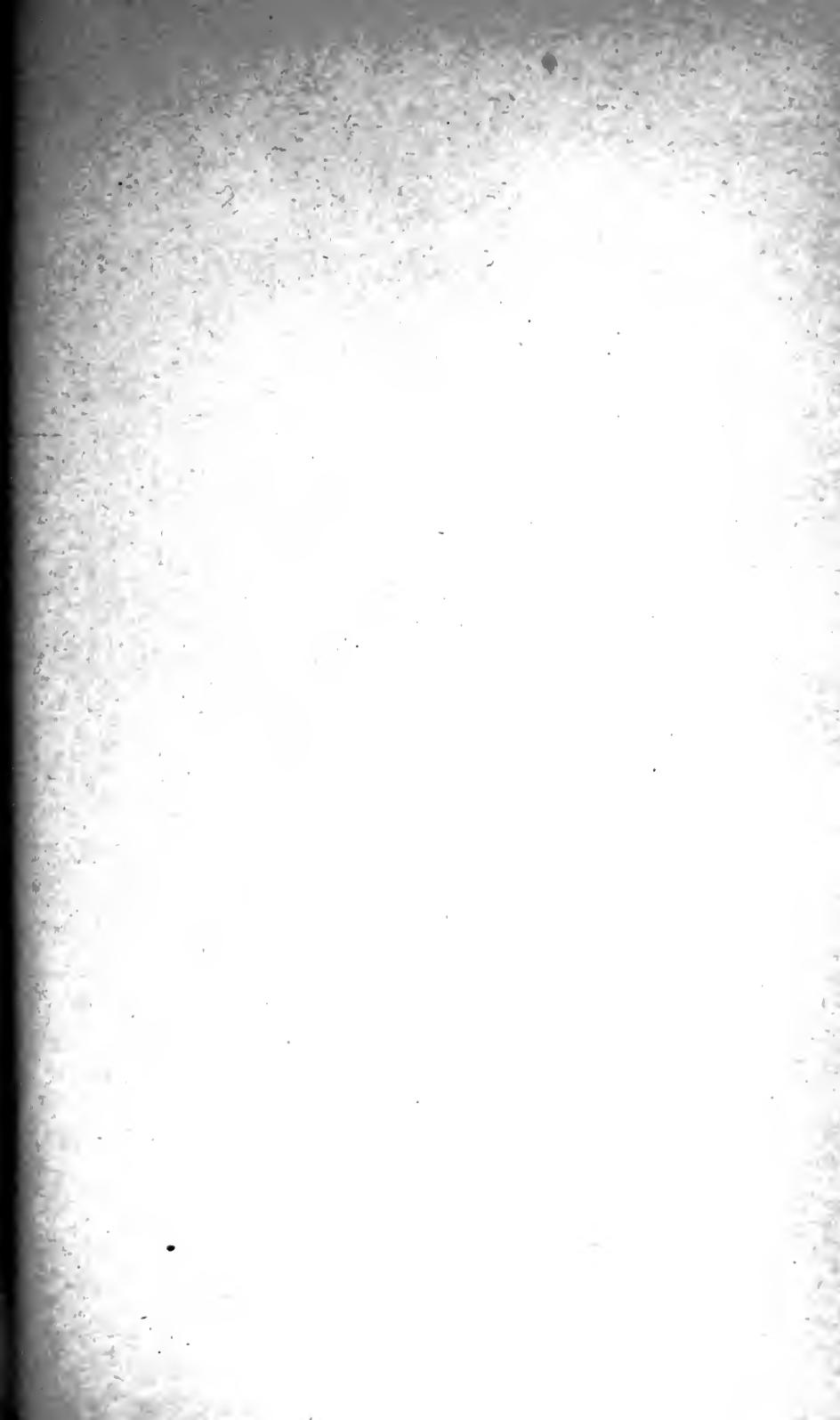
(S) BERNARD H. RAMSEY.

Subscribed and sworn to before me this 14 day of Aug. 1947.

[SEAL]

(S) LIONEL PUGMIRE,
*Notary Public in and for
the State of Washington, residing at Yakima.*

My commission expires: 3/8/48.





United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA, APPELLANT

v.

PRIEST RAPIDS IRRIGATION DISTRICT, A PUBLIC
CORPORATION, APPELLEE

PRIEST RAPIDS IRRIGATION DISTRICT, A PUBLIC
CORPORATION, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*Upon Appeal from the District Court of the United
States for the Eastern District of Washington*

BRIEF FOR THE PRIEST RAPIDS IRRIGATION DISTRICT,
APPELLEE AND CROSS APPELLANT

MOULTON & POWELL,
Kennewick, Washington

J. K. CHEADLE,
Spokane, Washington

*Attorneys for the Priest Rapids Irrigation
District, Appellee and Cross Appellant*

MAR -8 1948

PAUL P. O'BRIEN,
CLERK



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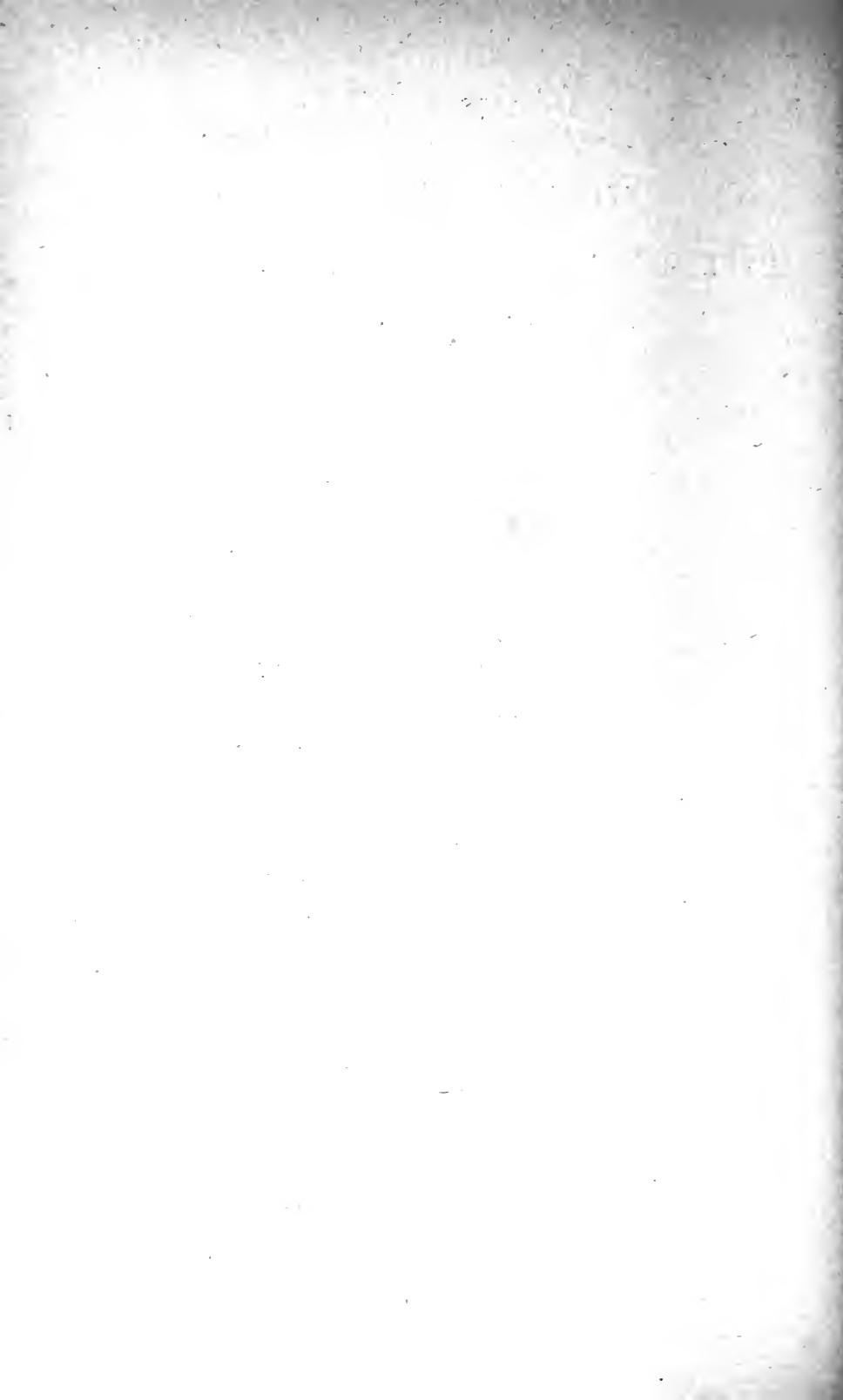
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SUBJECT INDEX

	<i>Page</i>
Opinions Below	1
Jurisdiction	1
Statement of the Case	2
Specifications of Errors	19
Summary of Argument	23
Argument on Cross Appeal:	24
Introduction—Just compensation, guaranteed by the Fifth Amendment, has not been awarded for the District's irrigation prop- erties.	24
I. The Fifth Amendment and the substan- tive and procedural law of federal condemnation actions require that the Government pay just compensation for ALL of the District's properties taken by the Government.	26
II. The Government, contrary to established law and the record, attempted use of the ancillary proceedings provided by the Declaration of Taking Act as separate and independent proceedings to carry the Government's "acquisi- tion policy" into effect.	30
III. Prior to trial in No. 128-99, there was no determination or award of just com- pensation for any of the District's properties.	35
IV. No state statute or judicial decision can affect the District's substantive right to be paid just compensation for ALL of its properties. — Moreover, the Government's contention is based on misconstruction of state law.	45

SUBJECT INDEX (Cont'd)

	<i>Page</i>
Answer to brief for the United States, appellant:	52
I. Government's basic contention seeks to avoid constitutional question of just compensation, and ignores record of what Government did.	52
A. Answer to Government Argument I, A	55
B. Answer to Government Argument I, B	56
C. Answer to Government Argument I, C	60
D. Answer to Government Argument I, D	64
E. Answer to Government Argument I, E	66
II. The Government cannot properly com- plain of the court's judgment re the District's irrigation properties.	68
Conclusion	71
Appendix	73

TABLE OF CITATIONS

	<i>Page</i>
CASES:	
11,000 Acres of Land v. United States, 152 F. (2d) 566	33
Atlantic Coast Line R. Co. v. United States, 132 F. (2d) 959	31, 56
Bono v. United States, 113 F. (2d) 724	60
Brooklyn Eastern Dist. Terminal v. City of New York, 139 F. (2d) 1007	42, 43, 61
Catlin v. United States, 324 U. S. 229, 65 S. Ct. 631	32
Comparet v. United States, 164 F. (2d) 452	33, 34, 67
Danforth v. United States, 308 U. S. 271, 60 S. Ct. 231	28
Drake v. General Finance Corp. of La., 119 F. (2d) 588	60
Duckett & Co. v. United States, 266 U. S. 149, 45 S. Ct. 38	27
Horse Heaven Irrigation District, In re, 11 Wn. (2d) 218, 118 P. (2d) 972.....	46, 47, 48, 64
Hovland v. Smith, 22 F. (2d) 769	59
Leonard v. Field, 71 F. (2d) 483	60
Meadows v. United States, 144 F. (2d) 751	28
Monongahela Navigation Co. v. United States, 148 U. S. 312, 13 S. Ct. 622	26, 62
Olson v. United States, 292 U. S. 246, 54 S. Ct. 704	26, 33
Polson Logging Co. v. United States, 149 F. (2d) 877	32

TABLE OF CITATIONS (Cont'd)

	<i>Page</i>
Pryor v. Paul, State ex rel, 5 Wn. (2d) 90, 104 P. (2d) 745	49
Spector Motor Co. v. McLaughlin, 323 U. S. 101, 65 S. Ct. 152	51
Town of Bedford v. United States, 23 F. (2d) 452	42, 46
United States v. 531 $\frac{1}{4}$ Acres of Land, 139 F. (2d) 244	28, 63
United States v. 25.936 Acres of Land, Etc., 153 F. (2d) 277	27, 28, 48, 50
United States v. 12,918.28 Acres of Land in Webster Parish, 50 F. Supp. 712	31
United States v. 25.4 Acres of Land, 71 F. Supp. 248	42, 43, 44, 57, 61, 68
United States v. Bauman, 56 F. Supp. 109	68
United States v. Block, 160 F. (2d) 604	34, 67
United States v. Buxton Lines, Inc., 16 L. W. 2403	61
United States v. Certain Lands, 46 F. Supp. 800	68
United States v. Certain Parcels of Land, 144 F. (2d) 626	46
United States v. Cottonwood Irrigation District, 19 F. Supp. 740	48
United States v. Dunnington, 146 U. S. 338, 13 S. Ct. 79	27
United States v. Gossler, 60 F. Supp. 971	63
United States v. Indian Creek Marble Co., 40 F. Supp. 811	46
United States v. Miller, 317 U. S. 369, 63 S. Ct. 276	26, 31, 43, 45

TABLE OF CITATIONS (Cont'd)

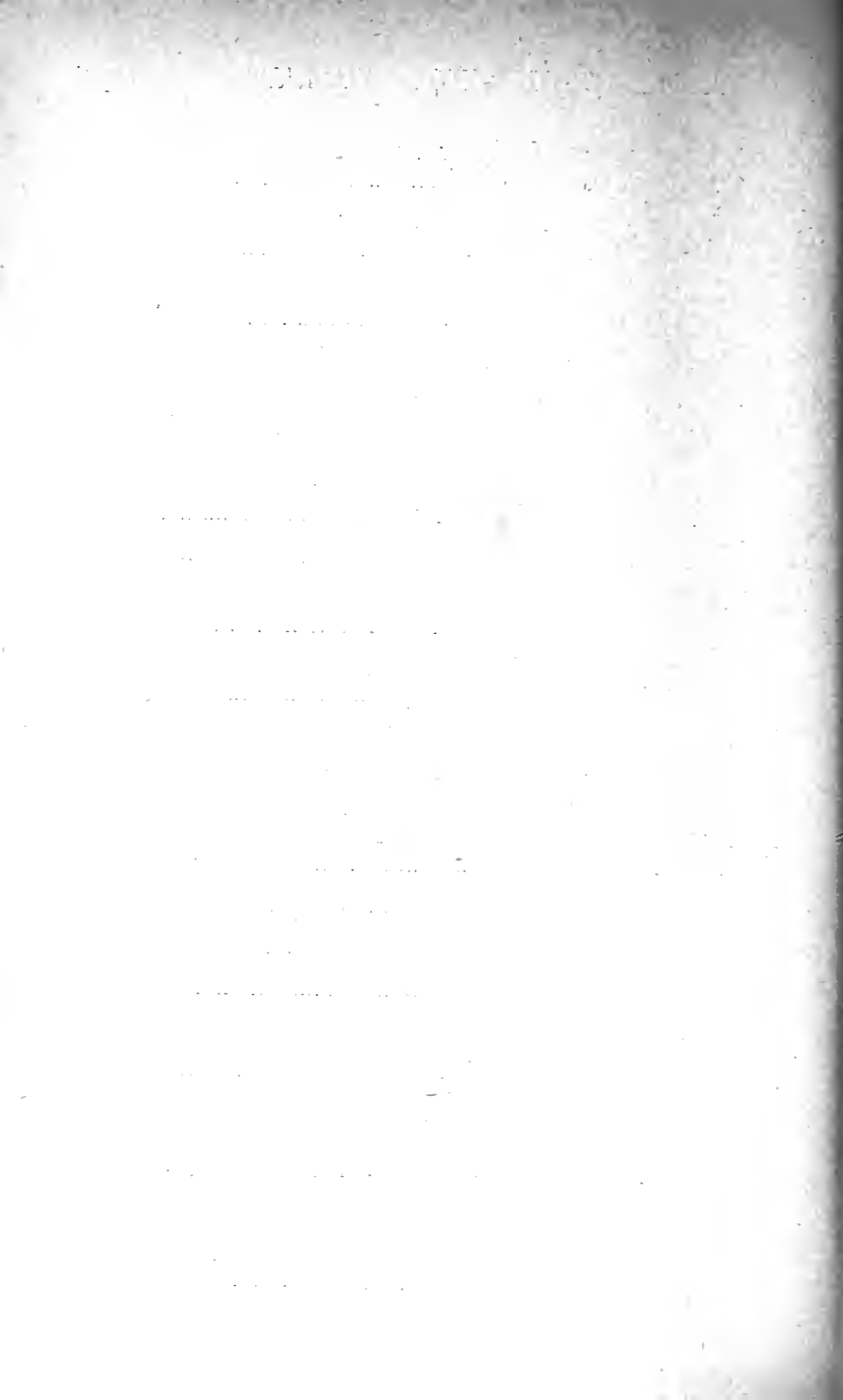
	<i>Page</i>
United States v. Petty Motor Co., 327 U. S. 372, 66 S. Ct. 596	27
United States v. Puget Sound Power & Light Co., 147 F. (2d) 953	42
United States v. State of Montana, 134 F. (2d) 194	46
United States v. Wheeler Tp., 66 F. (2d) 977	46
Washington Water Power Co. v. United States, 135 F. (2d) 541	27, 48

STATUTES:

Act of August 18, 1890, 26 Stat. 316	1
Act of July 2, 1917, 40 Stat. 241	1
Act of April 11, 1918, 40 Stat. 518, 50 U. S. C. sec. 171	1
Act of February 28, 1920, c. 91, sec. 402, 41 Stat. 477, 49 U. S. C. 1 (18)	61
28 U. S. C., sec. 225(a); section 128 of Judicial Code	1
Declaration of Taking Act, approved February 26, 1931, 46 Stat. 1421, 40 U. S. C. sec. 258(a)	30, 31
Rem. Rev. Stat. sec. 7417-2	61, 62
Rem. Rev. Stat. sec. 7428	61
Rem. Rev. Stat. sec. 7434	70
Rem. Rev. Stat. secs. 7526-7530	47
Rem. Rev. Stat. sec. 7527-1	65
Second War Powers Act, 1942, Sec. 201, 56 Stat. 176, 177, 50 U. S. C. sec. 171(a)	1, 4, 31, 32

RULES:

Rule 20(d) of the United States Circuit Court of Appeals for the Ninth Circuit	52
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OPINIONS BELOW

A memorandum opinion of Judge Schwellenbach appears at R. 175-181. An oral opinion of Judge Driver appears at R. 279-290; and another oral opinion of Judge Driver appears at R. 1133-1136. None of these opinions has been reported. For the convenience of this Court they are printed in the appendix of this brief, pp. 73-95, *infra*.

JURISDICTION

The Government's petition for condemnation (R. 2) and its amended petition, No. 128-99 (R. 107), invoked the jurisdiction of the district court under the Act of August 18, 1890, 26 Stat. 316, as amended by the Acts of July 2, 1917, 40 Stat. 241, April 11, 1918, 40 Stat. 518, 50 U. S. C. sec. 171, and section 201 of the Act of March 27, 1942, 56 Stat. 176, 177, 50 U. S. C. sec. 171 (a).

The cross appeal of the Priest Rapids Irrigation District is from the district court's judgment entered on March 7, 1947 (R. 1147-1158) and amended on March 14, 1947 (R. 1161-1163). Notice of the District's cross appeal was filed on June 6, 1947 (R. 1165-1166). This Court's jurisdiction of the District's cross appeal is invoked under section 128 of the Judicial Code as amended, 28 U. S. C. sec. 225 (a).

STATEMENT OF THE CASE

This is the one brief of the Priest Rapids Irrigation District, cross appellant and appellee, the appeal and cross appeal having been consolidated for briefing purposes by stipulation filed in this Court.

This statement of the case presents the questions involved in both the cross appeal and the appeal and the manner in which they are raised. — As will appear, the questions involved in the appeal and cross appeal arise from the same, or related, rulings of the district court. — The Government's "statement" (App. Br. 2-10) is controverted as being incomplete, even as regards the Government's appeal.

The questions involved arose in the gigantic condemnation action, *United States of America vs. Clements P. Alberts*, Civil No. 128 in the district court (R. 2), a condemnation proceeding for acquisition of approximately 194,000 acres (R. 8) for the Hanford Engineering Project. The part of that proceeding now on appeal was entitled, in the district court, *United States of America vs. Clements P. Alberts, Priest Rapids Irrigation District, et al.*, No. 128-99 (R. 106). The questions involved in the appeal and cross appeal arose at various times in *United States v. Alberts*, No. 128, and finally were tried in *United States v. Alberts, Priest Rapids Irrigation District, et al.*, No. 128-99.

The district court ruled that the Government must pay compensation for the District's so-called non-irrigation properties; but ruled that the Government need not pay compensation for the so-called irrigation properties of the District, other than the sum that was deposited in court and used to pay off the District's outstanding bonds which were a lien on said properties (R. 1147-1158). The Government appeals from the first of said rulings, the Government contending that it need not pay any compensation for the entire properties of the District, other than the deposit used to pay off said bonds. The District cross appeals from the second of said rulings, the District contending that the Government should be required to pay compensation in the amount of the value of all of the properties of the District taken by the Government.

In answer to a special interrogatory put to the jury by the district court, the jury determined that the value of the District's irrigation properties taken by the Government was \$365,845 (R. 1132). The Government's deposit in court of \$170,500 was used by the clerk of the court to pay off the bonds which were a lien on said properties (R. 1148-1149). And the District contends, on its cross appeal, that the award to the District should have been greater by the difference in those two amounts, namely, \$195,345. The District therefore contends that the district court should have entered a deficiency judgment for defendant District in an amount equal to

the sum of \$473,356 (the amount of the jury's verdict) plus \$195,345, or a total of \$668,701, together with interest as specified in the District's proposed judgment (R. 1138, at 1146).

Statement of the manner in which the questions involved on the appeal and cross appeal arose requires reference to various proceedings in the condemnation action of *United States of America v. Alberts, et al.*, No. 128 in the trial court.

The condemnation action was commenced on February 23, 1943 by the filing of the petition for condemnation (R. 2-10), pursuant to the request of the Secretary of War, dated February 18, 1943 (R. 8). As alleged in paragraph I of the petition (R. 2), the condemnation was undertaken:

pursuant to and in accordance with the provisions contained in the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 58; 50 U. S. S. sec. 171), and March 27, 1942 (Public Law 507-77th Congress), * * *.

On the same date, February 23, 1943, upon the Government's motion pursuant to the "Second War Powers Act, 1942", the court signed an order granting the Government the right of immediate possession (R. 10-16). The property being condemned was described in the petition and order (R. 3, 13) as follows:

The fee simple title, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines, in and to the following described lands, to-wit:

Then followed perimeter description of the areas being condemned. On April 22, 1943, an amended petition (R. 16-24) and an amended order granting right of immediate possession (R. 27-32) covered additional property, increasing the areas taken from about 194,000 to about 206,000 acres. In both of the above mentioned petitions, the Government prayed (R. 6, 22):

2. That a jury be empaneled to fix and determine a just and proper award and compensation for the property herein described, or in case a jury be waived, then that the compensation to be paid as aforesaid be ascertained and determined by the court or a judge thereof, and that the parties entitled to receive such compensation be determined thereby.

Pursuant to the order granting it the right of immediate possession, the Government took actual possession of the irrigation distribution system of the District on April 1, 1943 and took actual possession of the power plant on October 1, 1943; and it was so stipulated at the trial in this proceeding which is on appeal (R. 307).

Subsequent to the February 23, 1943 and April 22, 1943 petitions and orders granting right of immediate possession, the Government from time to time (R. 177) filed amended petitions and ac-

companying declarations of taking, covering certain designated tracts within the District. All of the District's properties and all of the lands within the District were within the large areas covered by the original petitions and orders of February 23, 1943 and April 22, 1943. An example of those amended petitions is the one filed on August 26, 1943 and designated No. 128-43 (R. 70-80). Therein the Government added to the recital of authorities:

and the Act of Congress approved February 26, 1931 (40 U. S. C. 258a) and acts supplementary thereto and amendatory thereof. (R. 71; Cf. R. 2)

The tracts covered by No. 128-43 were described in paragraph IV of the amended petition as follows (R. 72):

The full fee simple title thereto, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, and for existing irrigation ditches, canals, and laterals owned by the Priest Rapids Irrigation District in and to the following described lands, to-wit:

Among the tracts covered by No. 128-43 was tract No. P-1336, of which C. I. Wright and wife were owners (R. 74, 78). In the prayer of said amended petition No. 128-43, determination of compensation to be paid was sought, as in the original petitions (R. 80).

The first trial to determine compensation for tracts of land within the Priest Rapids Irrigation

District was had in the early part of October 1943, and the tracts involved included the Wright tract. And on October 12, 1943 an offer of proof was made on behalf of the owners of the Wright tract and two other tracts (R. 84-92). Briefly, the offer was an offer of proof of the value of the properties of the Priest Rapids Irrigation District of which the individual landowners were members by virtue of their ownership of tracts within the District. The offer of proof was objected to by the Government (R. 96):

for the reason that the value of the assets of the District and the lands are fully reflected in the appraisal of those lands as irrigated tracts.

For the further reason that there is no property interest in the assets of the District as to the lands or the owners of the lands until such time as the District has been dissolved under the provisions of the laws of the State of Washington, and that at the time of the taking there was no dissolution of the District and for the further reason that at the time of the taking any equitable right of the lands or the owners in the facilities of the District passed with the title itself and that the Government in taking the full fee simple title to the property acquired any equitable interest which either the lands taken or the owners of the lands taken as of that date may have had.

Judge Schwellenbach sustained the objection and made an oral statement for the record regarding his ruling (R. 97-99).

The Government, at the time of that first trial in October 1943, stated and agreed that the Government would proceed expeditiously with the filing of a declaration of taking covering the Priest Rapids Irrigation District's property (R. 100-105, at 103). But more than six months passed without such a declaration of taking being filed. As a consequence, on April 26, 1944, certain proceedings were had in the court's chambers (R. 100-105). Judge Schwellenbach noted (R. 102-103) that the Government in May 1943, had asserted that "it intended to acquire all of the property within the District, as a result of which it would then become the owner of the facilities and instrumentalities of the District." He noted further (R. 103-104) the Government's agreement in October 1943, to proceed expeditiously with the filing of a declaration of taking on the District's property. Then, notwithstanding the desire of the War Department and Department of Justice "to acquire title to all the property within the District before filing declarations of taking, as to the assets of the District" (R. 105) the court gave notice to the Government as follows (R. 104):

I am now giving notice to the Government that before any other cases are tried either the declaration of taking must be filed, or the next time any trials ensue I intend to permit the property owners to prove the value of their proportionate share in the Irrigation District, and it will be necessary for the Government by early June, which will be the date of the

next trial, to be ready to present its testimony as to the value of the Irrigation District, and I intend from now on to permit the property owners to submit such testimony and submit that issue to the jury.

In response to that notice the Secretary of War wrote to the Attorney General on May 4, 1944, requesting that the Attorney General have filed the enclosed declaration of taking No. 128-99. As stated by the Secretary of War in said letter (R. 81):

The declaration of taking covers all the operating properties and facilities of the Priest Rapids Irrigation District as described more fully therein, and shows \$170,500.00 as the estimate (*sic*) compensation therefor. This compensation represents the outstanding indebtedness of the District.

The Secretary of War noted (R. 82) that the War Department had been recently advised that unless a declaration of taking covering the District's properties and facilities was filed before June 1, 1944:

the court will entertain a motion to set aside all verdicts returned during this term of court and will permit in the future, the defendant in all cases to show the value of the District's properties and facilities. It is the recommendation of this Department that the declaration of Taking inclosed herewith, be filed immediately.

The Secretary of War explained in said letter of May 4, 1944 to the Attorney General that no appraisal report was being furnished on the District's

properties covered by declaration of taking No. 128-99 (R. 82-83):

An appraisal report is not furnished on any of the lands and interests described in the declaration of taking *for the reason that under the acquisition policy established by this Department and approved by the Department of Justice, it is the position of the Government that upon the acquiring all of the land in the Priest Rapids Irrigation District, the Government becomes the owner of the Irrigation District subject only to the bonded indebtedness of the District itself and an appraisal is therefore unnecessary.* (Italics added)

In accordance with the "acquisition policy" established by the War Department and approved by the Department of Justice, the amended petition in No. 128-99 (R. 106-119) contained as paragraph VI (R. 117-118) the following:

That the real property and interests therein described in paragraph IV hereof constitute all of the operating properties and facilities owned of record or claimed by the Priest Rapids Irrigation District, a municipal corporation of the State of Washington. That petitioner, United States of America, by reason of its ownership of all the real property lying within the boundaries of said Priest Rapids Irrigation District is in truth and in fact the equitable owner of the real property and interests therein described in paragraph IV hereof, subject only to the lien of the bonded indebtedness of said Priest Rapids Irrigation District, and said Priest Rapids Irrigation District, a municipal corporation of the State of Washington, now holds legal title thereto in trust for the use and benefit of petitioner,

United States of America. That the sum of \$170,500.00 deposited in the registry of this court with the filing of declaration of taking, No. 99 herein represents a sum which together with the bond redemption fund of said Priest Rapids Irrigation District is sufficient to pay and discharge all bonded indebtedness of said Priest Rapids Irrigation District.

Likewise in accordance with said "acquisition policy", the prayer in the amended petition (R. 118) omitted any request that just compensation be determined. The amended petition No. 128-99 and the accompanying declaration of taking were filed on May 12, 1944 (R. 119, 130).

Judge Schwellenbach entered his order on declaration of taking (R. 131-140) on May 15, 1944. Said order recites that the original petitions for condemnation filed on February 23, 1943 and April 22, 1943, and the orders granting the right of immediate possession entered on the same dates, covered the premises of the Priest Rapids Irrigation District described in the declaration of taking (R. 131); and the order on the declaration of taking further recites that it appeared to the court (R. 132-133):

*that pursuant to said orders granting the right of immediate possession entered herein on February 23, 1943 and April 22, 1943, possession was taken by the petitioner of the following described property * * *, (Italics added)*

In said order on declaration of taking Judge Schwellenbach (R. 140):

*Ordered that possession of the above described property be and the same is hereby confirmed,
* * *. (Italics added)*

In August and September of 1944 (R. 142-160), the Court entered judgments ordering that the bonds of the District be paid by the clerk of the court from the \$170,500 deposit. The judgments, entered pursuant to stipulations, state that the District joined in the stipulations solely for the purpose of agreeing to payment of the bonds and to the correctness of the amounts due thereon, without prejudice to any rights the District might otherwise have to contest the amount of just compensation to be paid for the taking of the properties of the District (e. g., R. 159).

The District on February 12, 1945 filed an answer to the amended petition No. 128-99, taking issue with the "acquisition policy" as set forth in paragraph VI of the amended petition, and affirmatively alleging the value of the District's properties (R. 161-172). The Government filed a demurrer to the answer (R. 173), and after a hearing on that demurer [and on a demurer to the answer of the Richland Irrigation District in a similar proceeding, No. 128-100], Judge Schwellenbach filed his memorandum opinion on June 21, 1945 (R. 175-181). For the convenience of this Court, Judge Schwellenbach's memorandum opinion is printed as Appendix "A" to this brief, pages 73 to 79, *infra*. An order sustaining the Gov-

ernment's demurer, with leave to amend, was signed on June 25, 1945 (R. 181).

Shortly thereafter Judge Schwellenbach left the bench; and in the winter of 1946 he was succeeded by Judge Driver.

The District filed an amended answer on September 21, 1945 (R. 182-191); and the Government again filed a demurrer, on October 24, 1945 (R. 191). That demurrer was argued on May 31 and June 1, 1946, before Judge Driver; and at the conclusion of argument, Judge Driver rendered an oral opinion (R. 279-290), in which he overruled the demurrer but decided that he should adopt and apply the so-called Schwellenbach formula (R. 287). An order overruling the demurrer was entered (R. 292). For the convenience of this Court the reporter's transcript of Judge Driver's oral opinion is printed as Appendix "B" to this brief, pages 80 to 91, *infra*.

Collaterally, in the winter of 1946 the Priest Rapids Irrigation District and other plaintiffs instituted an action in the Superior Court in and for Benton County, Washington, against the County Auditor and the County Treasurer (R. 252-267). Alleging that the county officials, at the request of Government counsel, were refusing to honor District warrants against District funds in the hands of the County Treasurer (R. 256), the plaintiffs in that Benton County case sought to compel the county officials to honor said warrants. Also, the

plaintiffs sought determination of the status of the District's directors and prayed that the Superior Court retain jurisdiction of the cause, looking to further appropriate proceedings following final disposition of the condemnation case (R. 263-265).

The Government by a special appearance in the Benton County action moved to quash and dismiss it (R. 273); and its motion was overruled (R. 277). Thereafter, on May 6, 1946, the Government, by its motion in No. 128-99 for appointment of trustee or receiver and for restraining order, sought to have the Federal district court enjoin further proceedings in the State court action (R. 221-267). The matter was set for hearing by an order to show cause (R. 268). Return to the rule was made (R. 270-279) and the matter was heard on May 15, 1946. On June 1, 1946, Judge Driver, in his oral opinion, announced his ruling against the Government's motion (R. 279-290, at 280-283, 288-289; Appendix "B", pp. 81-4, 89-90, *infra.*). An order denying the motion was entered (R. 293).

In the same oral opinion of Judge Driver, the district court concluded that a motion for leave to intervene in No. 128-99, filed by landowner Wright (R. 205-215), should be denied; and an order of denial was entered (R. 290). As Judge Driver stated, his reason for denying intervention by individual landowners was: "under my theory of it they are represented by the irrigation districts" (R. 289).

United States of America vs. Clements P. Alberts, Priest Rapids Irrigation District, et al., No. 128-99, came on for trial on February 10, 1947 (R. 296).

The Government objected to the introduction and reception of any and all testimony as to the value of the District's property (R. 387-390); and Judge Driver overruled the objection, consistently with his ruling of June 1, 1946 on the Government's demurrer and with his ruling announced in chambers at the beginning of the trial (R. 390; See also, R. 701-706, 1016-1028).

At the same time, the District made a record of its exception to that part of those rulings by Judge Driver which was against the District's position (R. 390-394).

During the trial, but in the absence of the jury, the District offered to prove that the Government had paid, in compensation awards, settlements, and deposits in court only \$630,960.80 for all of the lands within the Priest Rapids Irrigation District (R. 729-745, at 741-743). The offer of proof, made in the absence of the jury, was not made as an offer of evidence bearing on the value of the District's properties, but was made as an offer of evidence relevant and material to the legal issue of whether the District is entitled to compensation for all of its properties (R. 745). The offer of proof that the Government had paid only \$630,960.80 for

all of the lands within the District, including all of the improvements on the land as well as any crops growing thereon, was made (R. 729) to refute the Government's contention that the compensation paid for those lands within the District reflected the value of the properties of the District itself. [Subsequently, the jury, by its verdict and its answer to the special interrogatory, determined that the total value of the properties of the District itself was \$839,201 (R. 1131-1132).] The Government's objection (R. 743-744) to the offer of proof was sustained and the offer rejected (R. 745).

Judge Driver overruled the Government's motion for a directed verdict for a nominal sum (R. 852).

In his charge to the jury (R. 1098-1108), Judge Driver adhered to his application of the so-called Schwollenbach formula, in accordance with his rulings of June 1, 1946 and February 11, 1947.

The District excepted (R. 1111-1114, 1116) to the court's refusal to give the District's requested instructions No. 9 and No. 10 (R. 1129-1130) and to the court's charging the jury to value the District's properties separately and to return a verdict for only the non-irrigation properties (R. 1105, 1106). The Government excepted (R. 1116-1117) to the court's refusal to give the Government's requested instructions No. I and No. II (R. 1130-1131). These exceptions were in line with the legal positions

taken by the District and the Government throughout the proceeding.

The jury unanimously returned the following verdict, and answer to the court's Special Interrogatory (R. 1122-1123, 1131-1132).

VERDICT

We, the jury in the above entitled cause, find that the just compensation to be paid for the taking of that portion of the properties of the defendant, Priest Rapids Irrigation District, not devoted and applied to irrigation purposes, is \$473,356.00. P. E. Nickerson, Foreman.

SPECIAL INTERROGATORY

What was the fair, cash, market value at the time of taking of that part and portion of the properties of the defendant, Priest Rapids Irrigation District, taken by the United States, devoted and applied to irrigation purposes? Answer: \$365,845.00. P. E. Nickerson, Foreman.

On March 7, 1947, Judge Driver refused to enter judgment in the form proposed by the District (R. 1138-1147). After argument regarding the form of judgment, Judge Driver delivered his oral opinion (R. 1133-1137) and entered the court's judgment on verdict (R. 1147-1158). For the convenience of this Court the reporter's transcript of Judge Driver's oral opinion regarding judgment is printed as Appendix "C" to this brief, pages 92 to 95, *infra*. On March 14 Judge Driver (R. 1161-1163) struck from said judgment one paragraph and sub-

stituted therefor another paragraph, which provided that the deficiency judgment in the amount of \$473,356, with interest at the rate of six per cent per annum from October 1, 1943, shall be paid into federal court and remain subject to the orders of that court:

until such time as this Court shall order the payment of the same to the Superior Court of the State of Washington, in and for Benton County, for the use and benefit of the Priest Rapids Irrigation District in liquidation proceedings to be maintained in said Superior Court, * * *.

The Government filed notice of appeal (R. 1164) on June 6; and thereupon the District on the same date filed notice of cross appeal (R. 1165-1166).

The Government adopted its statement of points filed in the district court as its statement of points to be relied upon in this Court (R. 1169, 1181); and the District adopted its statement of points filed in the district court as its statement of points to be relied upon in this Court (R. 1174, 1182).

SPECIFICATION OF ERRORS

The district court erred:

1. In ruling that the value of the District's so-called irrigation properties would be determined by the jury only for limited purposes, excluding a deficiency award for said irrigation properties (R. 390-394).

2. In refusing to instruct the jury to return a verdict in the amount of the value of all of the property of the District taken by the petitioner. — The refused instruction reads as follows (R. 1129):

INSTRUCTION No. 9

You are instructed to determine the value of all of the property of the Priest Rapids Irrigation District described in the amended petition No. 128-99. That covers both the so-called irrigation properties and the so-called power properties. Although evidence bearing on the value of those two classes of district property has been segregated from time to time during the course of the trial, you are instructed to arrive at a verdict in a lump sum amount for all of the property.

The grounds of the objection to the court's refusal to give the above instruction read as follows (R. 1113-1114):

1. The Court's rulings deny to defendant district the constitutional protection of the fifth amendment to the Constitution of the United States of America: "nor shall private property be taken for public use, without just compensation";

2. The Acts of Congress under the authority of which the Government instituted this condemnation proceeding, and which Acts of Congress are recited in the original and amended petition in Civil No. 128 and in the amended petition and declaration of taking in Civil No. 128-99, require that there be determination of just compensation for the district's properties which in this condemnation proceeding the Government has taken in the exercise of its power of eminent domain;

3. That proceedings under the Declaration of Taking Act (40 U. S. C. 258a) and its provisions for deposits paid into the registry of the Court and for vesting of title in the Government are merely ancillary to the main condemnation proceeding, and cannot be used as a device for avoiding the basic constitutional and statutory requirement that in this condemnation proceeding there be a judicial determination and award of just compensation for the district's property—a use which the Government has attempted in Civil No. 128 and which the Court's rulings partially allow;

4. The pleadings and record in Civil No. 128 show that in the previous proceedings in No. 128 there has not been any determination or award of just compensation for the defendant district's properties;

5. The "acquisition policy" of the War Department and the Government's contention in support thereof, which the Court's rulings uphold in part, cannot properly be construed as more than a claim to part or all of the compensation award for the district's properties, which claim should be considered, if at all, after determination of the amount of the award and not as a device for evading determination and award of compensation; and

6. The "acquisition policy" of the War Department and the Government's contentions are based on the Government's construction of state statutes and decisions which are not applicable to the situation of the defendant district, or which at least have never been held applicable, and which this Court's rulings of June 1, 1946, and February 11, 1947, properly leave for State Court determination, as to the district's non-irrigation properties, but as to irrigation properties—erroneously decide in the Government's favor "on the basis of preliminary guesses regarding local law."

3. In instructing the jury to value the District's properties separately and to return a verdict in the sum of the value of only the so-called non-irrigation properties. — The court's instruction (R. 1105-1106) reads as follows:

Under the circumstances and the law as construed and applied by the court your verdict must be limited to a finding of just compensation for only that part of the defendant's properties involved in this action devoted to purposes other than irrigation purposes. * * *

In short, members of the jury, you are to divide and allocate the cash, market value of defendant's properties in accordance with its irrigation and non-irrigation uses and purposes. The non-irrigation value which you find should be included in your general verdict. The irrigation value which you find should be included in your statement of value in answer to the special interrogatory. The sum of these two amounts, the amount of your general verdict and the amount of your answer to the special interroga-

tory added together, should equal the fair, cash, market value of all of the properties of the defendant involved in this action.

The grounds of the objection to the court's above instruction read the same as the grounds of objection set out in specification of error No. 2 above, said grounds having been incorporated by reference, without objection, at the trial (R. 1113-1114, 1116).

4. In ordering that the petitioner, for the taking of the District's irrigation properties, the value of which the jury determined to be \$365,845 as of April 1, 1943, shall pay no sum other than the \$170,500 deposited as estimated just compensation for all the property of the District. — The court's order appears in the court's judgment (R. 1147-1158, at 1149-1150).

5. In refusing to enter a deficiency judgment for the District in the sum of \$668,701. — A deficiency judgment for the District in the sum of \$668,701, together with interest from appropriate dates, was proposed by the District, and refused by the court on March 7 (R. 1138-1147).

SUMMARY OF ARGUMENT

Argument on cross appeal:

Introduction—Just compensation, guaranteed by the Fifth Amendment has not been awarded for the District's irrigation properties.

- I. The Fifth Amendment and the substantive and procedural law of federal condemnation actions require that the Government pay just compensation for ALL of the District's properties taken by the Government.
- II. The Government, contrary to established law and the record, attempted use of the ancillary proceedings provided by the Declaration of Taking Act as separate and independent proceedings to carry the Government's "acquisition policy" into effect.
- III. Prior to trial in No. 128-99, there was no determination or award of just compensation for any of the District's properties.
- IV. No state statute or judicial decision can affect the District's substantive right to be paid just compensation for ALL of its properties. — Moreover, the Government's contention is based on misconstruction of state law.

Answer to brief for the United States, appellant:

- I. Government's basic contention seeks to avoid constitutional question of just compensation, and ignores record of what Government did.
 - A. Answer to Government argument I, A
 - B. Answer to Government argument I, B
 - C. Answer to Government argument I, C
 - D. Answer to Government argument I, D
 - E. Answer to Government argument I, E
- II. The Government cannot properly complain of the court's judgment re the District's irrigation properties.

Conclusion

ARGUMENT ON CROSS APPEAL

INTRODUCTION

Just Compensation, Guaranteed By the Fifth Amendment, Has Not Been Awarded for the District's Irrigation Properties.

The value of the District's irrigation properties when taken by the Government on April 1, 1943 (R. 307) was \$365,845, as determined by the jury in answer to the special interrogatory (R. 1132). The Government's deposit in the registry of the court was only \$170,500, which was paid by the clerk of the court in liquidation of the District's bonded indebtedness that was a lien upon the District's irrigation properties (R. 1149). But under

the so-called Schwellenbach formula, as adopted and applied by the district court, the judgment orders that no other sum shall be paid by the Government as just compensation for the taking of said irrigation properties (R. 1149-1150). Thus, the award for the District's irrigation properties, determined by the jury to have a value of \$365,845, was limited by the court's judgment to the Government's deposit of \$170,500.

The Government should be required to pay the difference of \$195,345. — That sum of \$195,345 should be awarded to the District for its irrigation properties, in addition to the \$473,356 awarded to the District for its power properties (R. 1149-1150, 1157). The district court's judgment should be reversed with instructions to enter a deficiency judgment in the sum of \$668,701 together with interest as specified in the District's proposed judgment (R. 1146).

There is no support in law for the Government's basic contention that it may take all of the District's properties without paying any compensation for them except the Government's deposit of \$170,500, used by the clerk of the court to liquidate the District's bonded indebtedness. Nor is there any support for the Schwellenbach formula to the extent it allows the Government to take \$365,845 worth of irrigation properties and pay as "just compensation" only the \$170,500 deposit. The Government's contention and that part of the Schwel-

lenbach formula are contrary to the Fifth Amendment of the Constitution of the United States, inconsistent with the acts of Congress pursuant to which condemnation of the District's properties was undertaken, and contrary to the controlling decisions of the federal courts.

I

The Fifth Amendment and the Substantive and Procedural Law of Federal Condemnation Actions Require That the Government Pay Just Compensation for ALL of the District's Properties Taken By the Government.

It is well established by decisions of the Supreme Court that the just compensation required by the Fifth Amendment is the full and perfect equivalent in money of property taken by the Government.

Monongahela Navigation Co. v. United States, 148 U. S. 312, 326, 13 S. Ct. 622, 37 L. Ed. 463 (1893);

Olson v. United States, 292 U. S. 246, 255, 54 S. Ct. 704, 78 L. Ed. 1236 (1934);

United States v. Miller, 317 U. S. 369, 373, 63 S. Ct. 276, 87 L. Ed. 336 (1943).

A point made in the opinion in *Monongahela Navigation Co. v. United States*, *supra* (148 U. S. 312, 326) is particularly applicable here:

And this just compensation, it will be noticed is for the property, and not to the owner. Every other clause in this 5th Amendment is personal. "No person shall be held to answer for a cap-

ital, or otherwise infamous crime," etc. Instead of continuing that form of statement, and saying that no person shall be deprived of his property without just compensation, the personal element is left out, and the "just compensation" is to be a full equivalent of the property taken. * * * and leaves it, to stand as a declaration, that no private property shall be appropriated to public uses unless a full and exact equivalent for it be returned to the owner.

It is the *property* of the Priest Rapids Irrigation District that may not be taken without just compensation.

It was the *property* of the District that the Government took. — And the condemnation proceeding is in rem. *United States v. Petty Motor Co.*, 327 U. S. 372, 376, 66 S. Ct. 596, 90 L. Ed. 729; *Duckett & Co. v. United States*, 266 U. S. 149, 151, 45 S. Ct. 38, 69 L. Ed. 216; *United States v. Dunnington*, 146 U. S. 338, 350, 354, 13 S. Ct. 79, 36 L. Ed. 996; *Washington Water Power Co. v. United States*, 135 F. (2d) 541, 543 (CCA 9th); *United States v. 25.936 Acres of Land, Etc.*, 153 F. (2d) 277, 279 (CCA 3rd 1946).

Furthermore, it is well established that the condemnation award stands in the place of the property which has been taken.

United States v. Dunnington, 146 U. S. 338, 351, 353, 13 S. Ct. 79, 36 L. Ed. 996 (1892);

Meadows v. United States, 144 F. (2d) 751, 753 (CCA 4th 1944);

United States v. 531 $\frac{1}{4}$ Acres of Land, 139 F. (2d) 244, 247 (CCA 2d 1943; cert. den. 322 U. S. 730.

As the court held in *United States v. 25.936 Acres of Land, Etc.*, 153 F. (2d) 277, 279 (CCA 3rd 1946):

A condemnation proceeding is a proceeding in rem. It is not a taking of rights of persons in the ordinary sense but an appropriation of the land or property itself. As indicated by the Supreme Court in *Duckett & Co. v. United States*, 266 U. S. 149, 151, 45 S. Ct. 38, 69 L. Ed. 216, all previous existing estates or interests in the land are obliterated. An unqualified appropriation in fee simple by the United States under the Act, cited *supra*, creates a new title. *The condemnation award when made stands in the place of the land and the rights of all persons may be treated as though transferred to the award.* *United States v. Dunnington*, 146 U. S. 338, 351, 13 S. Ct. 79, 36 L. Ed. 996; *United States v. Certain Lands in Borough of Brooklyn*, 2 Cir., 129 F. 2d 577, 579. (Italics added)

And consistently with the above, the Supreme Court held in *Danforth v. United States*, 308 U. S. 271, 283, 284, 60 S. Ct. 231, 84 L. Ed. 240 (1939), that: "*For the reason that compensation is due at the time of taking, the owner at that time, not the owner at an earlier or later date, receives the payment.*" (Italics added)

In view of the law settled by the cases cited above, it is clear that the Government proceeded in rem when on February 23, 1943, it filed its petition in condemnation and obtained an order granting it the immediate right of possession (R. 2-16). And the Government obviously proceeded in rem when on April 1, 1943, it took actual possession of the District's irrigation properties (R. 307). It is likewise clear that the Fifth Amendment requires that the Government pay as just compensation the full and perfect equivalent in money of the irrigation properties taken—\$365,845, as determined by the jury (R. 1132). It is clear that the \$365,845 award when made would stand in the place of the irrigation properties taken; and that the rights of the owner District and of the bondholders having a lien on the irrigation properties would be treated as though transferred to the award.

Yet, contrary to the well established law cited above, the judgment of the district court limits compensation for the District's irrigation properties to the Government's deposit of \$170,500—\$195,345 less than the full equivalent in money as determined by the jury.

There have been variety and inconsistency in the procedural and substantive theories, which have been used in the Government's attempt to carry its "acquisition policy" into effect, and which in part were incorporated into the Schwellenbach for-

mula. The variety and inconsistency are shown in the following sections of this brief.

II

The Government, Contrary to Established Law and the Record, Attempted Use of the Ancillary Proceedings Provided By the Declaration of Taking Act As Separate and Independent Proceedings to Carry the Government's "Acquisition Policy" into Effect.

As Judge Schwellenbach stated (R. 102-103), the Government in May, 1943, asserted that it "intended to acquire all of the property within the District, as a result of which it would then become the owner of the facilities and instrumentalities of the District." He further noted in the April 26, 1944 proceedings (R. 100, at 105) the desire of the Government to acquire all the property within the District before filing a declaration of taking as to the District's properties. The Government sought, by selective timing of its amended petitions and declarations of taking in *United States of America vs. Clements P. Alberts*, No. 128, to use the ancillary procedure of the Declaration of Taking Act, 46 Stat. 1421, 40 U. S. C. sec. 258 (a), as a device for carrying its substantive "acquisition policy" into effect.

But in that attempt the Government disregarded what it had already done. It had commenced condemnation, and had obtained orders granting the

right of immediate possession, of *both* the lands within the District and the properties of the District itself by the original petitions and orders of February 23, 1943 (R. 2-16) and April 22, 1943 (R. 16-32). And pursuant to those orders, granted under the "Second War Powers Act, 1942," the Government took actual possession of the District's irrigation properties on April 1, 1943, and took actual possession of the District's power properties on October 1, 1943 (R. 307).

The condemnation proceeding commenced on February 23, 1943 was and is one action, a single suit, even though separate trials were given the several amended petitions, and even though the Government substantially controlled the division of the suit for separate trials by filing amended petitions more particularly describing various, comparatively small, groups of tracts.

Atlantic Coast Line. R. Co. v. United States, 132 F. (2d) 959, 962 (CCA 5th 1943) ;

United States v. 12,918.28 Acres of Land in Webster Parish, 50 F. Supp. 712, 721 (D. C., W. D. La. 1943).

Furthermore, the Declaration of Taking Act provides merely an ancillary proceeding. It does not provide a separate, independent proceeding. As the Supreme Court, on January 4, 1943, stated in *United States v. Miller*, 317 U. S. 369, 380-381, 63 S. Ct. 276, 87 L. Ed. 336, with regard to the dec-

laration of taking procedure: "Thus the acquisition by the Government of title and immediate right to possession, and the deposit of the estimated compensation, occur as steps in the main proceeding." Likewise, in *Catlin v. United States*, 324 U. S. 229, 240, 65 S. Ct. 631, 89 L. Ed. 911 (1945), the Supreme Court held that the procedure of the Declaration of Taking Act for paying deposits into Court and vesting title in the Government is merely ancillary to the main condemnation proceeding. This Court followed the Catlin case in *Polson Logging Co. v. United States*, 149 F. (2d) 877 (CCA 9th 1945).

The "taking" of the District's properties, within the meaning of the Fifth Amendment, was commenced on February 23, 1943 (R. 2-16) and was completed no later, in point of time, than April 1, 1943, as regards the District's irrigation properties and no later than October 1, 1943, as regards the District's power properties (R. 307).

The Government's theory that it acquired the District's properties by becoming successor in interest thereto, piecemeal, as the Government acquired individual tracts within the District is fallacious in view of the record that the Government *took* the District's properties in condemnation and took possession under the Government's right of immediate possession pursuant to the Second War Powers Act, 1942.

It should be noted that the Government's attempt to carry out its "acquisition policy" by novel use of declarations of taking is apparently *ad hoc*, for the Hanford project alone. In the recent case of *Comparet v. United States*, 164 F. (2d) 452 (CCA 10th 1947) the petition in condemnation was filed on June 15, 1942 and, pursuant to the Second War Powers Act, 1942, an order of immediate possession was entered the same day. Declaration of taking was filed about six months later. At the trial in June, 1945, the court instructed the jury (164 F. (2d) 452) that it should "value the land taken by the Government, according to its actual fair market value on the 15th day of June, 1942, which was the date upon which the United States acquired title to the property." The landowner appealed contending that valuation, under Colorado law, should have been as of the June 1945 trial date. The Government, appellee, successfully contended for affirmance of the district court. From the following authorities cited in the appellate court's affirming opinion, it may be assumed that the Government did not question *Olson v. United States*, 292 U. S. 246, 255, 54 S. Ct. 704, 78 L. Ed. 1236 (1934) in which the Supreme Court held that just compensation "is the market value of the property at the time of the taking contemporaneously paid in money." — and that the Government did not question *11,000 Acres of Land v. United States*, 152 F. (2d) 566, 568 (CCA 5th 1945), in which the court said:

We regard it as well settled that, either where no declaration of taking is filed or where, as here, the declaration of taking is filed on the date subsequent to the actual passing of possession, the market value of the property taken should be determined as of the date possession was acquired.

It may likewise be assumed that the Government did not contend that the rules recognized in the above cases had been changed by the Declaration of Taking Act. — In affirming the district court, the appellate court stated (164 F. (2d) 452, 453):

When on June 15, 1942 the petition of condemnation was filed and an order of immediate possession entered, appellant was deprived of her property and the United States had the right of possession. * * * When the Government acquired possession in 1942 there was a "taking" of appellant's property for public use; compensation therefor was then due and payable, and under the Federal rule of decisions its fair market value should be determined as of that date.

Similarly, the Government as appellant in this Court in *United States v. Block*, 160 F. (2d) 604, 607 (CCA 9th 1947), contended that certain machinery and equipment "were taken" on (and should have been valued as of) September 28, 1942, when an order granting right of immediate possession of an oil leasehold was entered. The Government made that contention, although a declaration of taking was not filed until four weeks later and although the record was silent as to when pos-

session of the equipment was taken, and although an amended complaint covering "personal property" was not filed until January 12, 1944.

Obviously, the Government's position in the Com-paret and Block cases, *supra*, is inconsistent with the Government's theory that it did not take the Priest Rapids Irrigation District's irrigation properties on February 23, 1943 (R. 2-16) or April 1, 1943 (R. 307), but that instead it "succeeded" piecemeal to those properties as it subsequently acquired individual tracts of land within the District's boundaries.

III

Prior to Trial in No. 128-99, There Was No Determination or Award of Just Compensation for Any of the District's Properties.

Soon after the original petitions and orders for possession in No. 128, dated February 23, 1943 and April 22, 1943 (R. 2-32), and soon after the Government, pursuant to the order of February 23, 1943, took actual possession of the District's irrigation properties on April 1, 1943 (R. 307)—the Priest Rapids Irrigation District moved for an order establishing sequence of trial (R. 33). As the record shows, that motion was in the alternative:

that the above entitled case be set down for trial as against this defendant [District] in advance of the trial of any and all cases against owners of land within the boundaries of Priest Rapids Irrigation District, *or* that if cases of

the United States against individual owners of land are tried in advance of the case against this defendant, the value of its assets described in the following affidavit, distributable to such individual owners, be excluded from consideration in the award of damages or compensation to be paid to such individual owners, * * *. (Italics added)

As Judge Schwellenbach stated, in the April 26, 1944 proceedings (R. 100-105, at 103), that effort of the District in May 1943 was resisted by the Government, the Government "asserting it intended to acquire all of the property within the District, *as a result of which* it would *then* become the owner of the facilities and instrumentalities of the District." (Italics added) — In view of the Fifth Amendment and the law well settled by federal court decisions, Judge Schwellenbach's next sentence (R. 103) accurately describes the Government's position: "This presented an entirely new proposition of law."

At Judge Schwellenbach's suggestion (R. 103), it was agreed that in the trial of the first landowner's case there would be made, on behalf of the landowner, an offer of proof of the value of the District's properties; that Judge Schwellenbach would deny the offer; and that an appeal would be expedited.

That procedure was abandoned, as Judge Schwellenbach stated (R. 103), in part due to the statement by Government counsel and agreement "that

the Government would proceed expeditiously with the filing of the declarations of taking on the properties of the Irrigation District." The change in the agreed procedure was for further reasons, stated by Judge Schwellenbach in his memorandum opinion of June 21, 1945 (R. 175-181, at 178; see App. "A" this brief). In that opinion on the Government's demurer to the District's answer in No. 128-99, Judge Schwellenbach stated, in rejecting the Government's contention that through the District in No. 128-99 the landowners were "attempting to take a second bite at the apple" (R. 178):

The fact is that, in the first case which was tried, the landowner attempted to assert his claim to his proportionate share in the District's assets, the petitioner objected and I rule (*sic*) against the landowner. The basis of this ruling was that in the trial for the purpose of determining the compensation to be paid for a separate tract, there was no room to try out also the value of that landowner's proportionate share of the District assets. He was not the owner of the legal title to the District assets. He had no right to assert a direct claim to his proportionate share. Furthermore, as a matter of procedure, if I had permitted each landowner to assert his claim in each separate trial, it would have resulted in chaos and interminable delay as a consequence of which this (*sic*) cases never would have been completed. Imagine the situation in each case of having the voluminous testimony as to the value of District assets presented to each separate jury. Furthermore, it would have resulted in an absurd situation because the landowner in one case would have a jury fixing one value upon the District's as-

sets and then the jury in the next case might place an entirely different value upon the District's assets. The awkwardness and the confusion which would have resulted was realized by counsel on both sides and dozens of cases have been tried since with the understanding that, at some time, the question of the right of the landowners to their proportionate share of the value of the District assets would be thrashed out.

That neither the landowners nor their District got a first "bite at the apple" in the trial of the first landowners' case in October 1943 is obvious from the record of their offer of proof as to the value of the properties of the District itself (R. 84-92) and from the record of the Government's successful objection (R. 96-99).

The varied and inconsistent reasons for the Government's successful objection to the offer of proof show the Government's attempt to avoid *any* determination or award of compensation for the District's properties. The reasons given were (R. 96):

for the reason that the value of the assets of the District and the lands are fully reflected in the appraisal of those lands as irrigated tracts.

For the further reason that there is no property interest in the assets of the District as to the lands or the owners of the lands until such time as the District has been dissolved under the provisions of the laws of the State of Washington, and that at the time of the taking there was no dissolution of the District and for the further reason that at the time of the taking

any equitable right of the lands or the owners in the facilities of the District passed with the title itself and that the Government in taking the full fee simple title to the property acquired any equitable interest which either the lands taken or the owners of the lands taken as of that date may have had.

At that point, the Government was contending that it was acquiring interests in the District's properties piecemeal as it acquired the privately owned lands within the District, *and at the same time* the Government was succeeding in keeping away from the juries in the landowners' cases any evidence as to the value of the District's properties which the Government contended it was thus acquiring piecemeal.

It is significant that the amended petitions and declarations of taking covering individual tracts within the Priest Rapids Irrigation District did *not* cover any of the District properties. Furthermore, they expressly excluded any District property that might be on the tracts, as shown by the description of the tracts covered by the amended petition in No. 128-43 (R. 72):

The full fee simple title thereto, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, and *for existing irrigation ditches, canals, and laterals owned by the Priest Rapids Irrigation District* in and to the following described lands, to-wit: (Italics added)

In the individual landowners' cases, neither the amended petitions nor the evidence covered the District's properties.

Yet, the Government contends that the value of the District's properties was reflected in the appraisal of the landowners' tracts; and the Schwellenbach formula, as regards the District's irrigation properties, accepts the Government's "acquisition policy."

Incidentally, it should be noted that some of the farms within the District were not dependent upon the District's facilities for irrigation water supply. When Judge Schwellenbach ruled against the offer of proof on behalf of landowners Parke, Wright and Shaw (R. 97, 98), he recognized the existence of that situation on some of the tracts there involved. Also, there was uncontroverted testimony in the trial of No. 128-99 (R. 344) that quite a few owners of land within the District obtained their irrigation water by pumping from wells, instead of receiving service from the District.

Judge Schwellenbach in his memorandum opinion of June 21, 1945, (R. 175-181, at 179; see App. "A" this brief) based his partial acceptance of the Government's contention on his statement that "In each one of the trials and in all of the appraisals, the value of the separate tracts was upon the proposition that they were within the irrigation district and had irrigation water available."

But that is no different than determining value of land upon other propositions such as: it is within the service area of a railroad, and it is within the service area of a light and power utility. As the record shows, the amended petition of April 22, 1943 in No. 128, besides adding an additional area, also included railroad easements of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (R. 17-18, 128c). Availability to a landowner's tract of a water supply from the District contributed to value of the farm just as did the farm's having available railroad service furnished by the Chicago, Milwaukee, St. Paul Railroad, or as the farm's having available electric light and power service from the Pacific Power & Light Company (R. 344).

Of course, the availability of an irrigation water supply from the District's irrigation properties made possible the development of many tracts into irrigated farms that had substantial value, justifying substantial awards of compensation.— Likewise, availability of a water supply from a private ditch company makes possible the high value development of an orchard served by the private ditch company. So too, the value of a farm depends in part upon availability of railroad service and power and light service.

Moreover, values of farms within the District, and values of the District's properties and of the railroad and power utility properties, were mutual-

ly dependent in part. But that fact did not and could not relieve the Government from the constitutional requirement that it pay just compensation for the railroad properties it took for the purposes of the Hanford project. Nor can that fact relieve the Government from the same requirement that it pay just compensation for the District's properties it took for the same purpose.

United States v. Puget Sound Power & Light Co., 147 F. (2d) 953 (CCA 9th 1945);

Brooklyn Eastern Dist. Terminal v. City of New York, 139 F. (2d) 1007, 1013 (CCA 2nd 1944), cert. den. 322 U. S. 747, 64 S. Ct. 1158, 88 L. Ed. 1579 (1944);

Town of Bedford v. United States, 23 F. (2d) 452 (CCA 1st 1927);

United States v. 25.4 Acres of Land, 71 F. Supp. 248, 251 (D. C., E. D. N. Y. 1947).

In the Brooklyn Eastern Dist. Terminal case, *supra*, the condemnation proceeding was by the United States against certain land in Brooklyn owned by the City, which had an agreement with the Terminal. The latter petitioned for an award of compensation and the City opposed. The appellate court held that under the agreement the Terminal had an easement over the City's waterfront property and for that easement compensation must be paid, as it must be paid for railroad rights of

of way. In the course of its opinion, the court noted (139 F. (2d) 1007, 1013) that the measure of compensation to the Terminal could not be the amount by which the value of the servient land was lessened by reason of the easement. The easement, if anything, added to the value of the servient land; and in accordance with *United States v. Miller*, 317 U. S. 369, 373, the compensation to meet the constitutional requirement must be the full and perfect equivalent in money of the property taken.

Just as the Terminal's easement, if anything, added to the value of the servient land, so utility services, or irrigation services from a private ditch company or irrigation district, add to the value of property. And the full and perfect equivalent of just compensation includes not only the value of the property served but also the value of the property that renders the service.

United States v. 25.4 Acres of Land, 71 F. Supp. 248, 251 (D. C., E. D. N. Y. 1947) was concerned with part of the some condemnation involved in *Eastern District Terminal v. City of New York*, *supra*. In the 1947 aspect of that proceeding, regarding compensation to be paid privately owned utilities, the Government made a contention similar to that made against the Priest Rapids Irrigation District. In that 1947 case, the district court flatly rejected the Government's argument (71 F. Supp. 248, 251):

It is also argued by the Government that since the awards made for damage parcels privately leased from the City of New York were based in part upon their being in receipt of gas and electric current for consumption on those respective premises, the awards made in connection therewith must be deemed to have embraced the claims now asserted, and claimants' compensation should have been carved therefrom.

It is difficult, if not impossible, to follow that argument. The testimony of the expert on damage parcel values was imported into this record by consent, and is as follows:

“ ‘Q. Your value of this entire property as an entity reflected all of the street improvements, including pavements, water mains, sewers, lighting and so forth, did it not?’ ”

“ ‘The answer is ‘A. All that you have enumerated. It includes all you have enumerated. It did not include any refrigeration service. It included the regular utilities like water, gas, electricity and street pavements and sewers.’ ”

The obvious meaning of the foregoing is that the damage parcels were appraised as being improved in the respects indicated; the testimony had nothing to do with the mains, conduits, etc., which lay in the beds of the streets and ways, nor could it, since those things did not form a physical part of any of the several damage parcels, but constituted properties of these claimants.

Furthermore, if the owner of a farm owned stock in the utility corporation that served his farm with light and power, the utility would none the less have to be paid the full and perfect equivalent of

the serving power lines, etc., that were also taken—even though upon a dissolution of the utility corporation the farmer would share in a distribution of the utility's assets including the condemnation award for the utility properties taken.

IV

No State Statute or Judicial Decision Can Effect the District's Substantive Right To Be Paid Just Compensation for ALL of Its Properties.—Moreover, the Government's Contention Is Based On Misconstruction of State Law.

The Government in October 1943 (R. 96) and subsequently, in pressing its "acquisition policy" regarding the Priest Rapids Irrigation District's properties, has relied on the Government's construction of the law of the State of Washington pertaining to irrigation districts and their dissolution. In so doing the Government has disregarded federal condemnation law and has misconstrued the law of the State of Washington.

As the Supreme Court held in *United States v. Miller*, 317 U. S. 369, 379, 63 S. Ct. 276, 87 L. Ed. 336 (1943), in rejecting a landowner's attempt to use state law to increase compensation as measured by federal law:

We need not determine what is the local law, for the federal statutes upon which reliance is placed require only that, in condemnation proceedings, a federal court shall adopt the forms and methods of procedure afforded by

the law of the State in which the court sits. They do not, and could not, affect questions of substantive right—such as the measure of compensation—grounded upon the Constitution of the United States.

On this point, the Miller case has been followed by this Court in *United States v. State of Montana*, 134 F. (2d) 194, 197 (CCA 9th 1943), cert. den. 319 U. S. 772, 63 S. Ct. 1438, 87 L. Ed. 1720 (1943); and by the Third Circuit in *United States v. Certain Parcels of Land*, 144 F. (2d) 626, 628 (CCA 3rd 1944). See also, *United States v. Indian Creek Marble Co.*, 40 F. Supp. 811, 818 (D. C., E. D. Tenn. 1941); *Town of Bedford v. United States*, 23 F. (2d) 453 (CCA 1st 1927); *United States v. Wheeler Tp.*, 66 F. (2d) 977, 981 (CCA 8th 1933).

As the court stated in *United States v. Wheeler Tp.*, *supra*:

The Fifth Amendment prohibits the United States from taking private property for public use without just compensation and those entitled to the protection of that provision cannot lose that right because of any state constitution, statute, or judicial decision.

The Government has relied (R. 388) on the Washington case of *In re Horse Heaven Irrigation District*, 11 Wn. (2d) 218, 118 P. (2d) 972 (1941), in its attempt to carry into effect its "acquisition policy" regarding the Priest Rapids Irrigation District's properties. However, the Horse Heaven District was dissolved pursuant to the provisions of

Washington's statutes, Chapter 79, Laws of 1897, p. 207, as amended by Chapter 149, Laws of 1939, p. 447 (Rem. Rev. Stat., Secs. 7526-7530). The 1897 Act provided for disorganization of an irrigation district "which has no bonded indebtedness outstanding,"—and the Priest Rapids Irrigation District, as the record clearly shows (R. 117, 142-160), did have bonded indebtedness when the Government took its properties in 1943. It still had bonded indebtedness in 1944 when the Government finally filed its amended petition and declaration of taking in No. 128-99. Furthermore, the 1939 Act involved in the Horse Heaven case was applicable to an irrigation district of the State of Washington which has no bonded indebtedness outstanding "and which has been in existence for more than twenty (20) years without having secured the irrigation of any of its lands." The Priest Rapids District had irrigated lands within the District. Obviously, therefore, the statutes involved and construed in the above mentioned state case were and are inapplicable to the Priest Rapids Irrigation District.

Moreover, in the Horse Heaven case (which was a five to four decision), Mr. Justice Millard, in his opinion for the majority, stated that the "property holders" of the District included contract purchasers "who, to protect their contracts, *must pay such assessments as are levied against the land which is the subject of those contracts.* The contract purchasers are members of the group which is

really interested in the success of the District; those who have to meet its burdens.” 11 Wn. (2d) 218, 237 (Italics added).

In other words, the “property holders” in whose favor the Washington court decided in the Horse Heaven case (under statutes inapplicable to the Priest Rapids Irrigation District) were those who were subject to assessments by the District, “those who have to meet its burdens.” — There is nothing in the record which shows that the United States, as condemnor of the lands within the District, in *United States v. Alberts*, No. 128, took those lands subject to past or future assessments or burdens of the District. And it is well settled that the United States did not acquire said land subject to any such assessments or burdens.

Washington Water Power Co. v. United States, 135 F. (2d) 541, 543 (CCA 9th 1943);

United States v. 25,936 Acres of Land, Etc., 153 F. (2d) 277, 279 (CCA 3rd 1946).

Furthermore, even as regards lands it purchases in an irrigation district, the Government is not among those landowners “who have to meet its burdens.” See *United States v. Cottonwood Irrigation District*, 19 F. Supp. 740 (D. C., N. D. Calif. 1937) where the Government set aside and cancelled liens created by assessments levied subsequent to purchase by the Government.

As regards the pending state court proceeding involving the Priest Rapids Irrigation District (R. 252-267), the case of *State ex rel Pryor v. Paul*, 5 Wn. (2d) 90, 94, 104 P. (2d) 745 (1940), is pertinent. There the Washington Supreme Court, after ruling that the county court had obtained jurisdiction of a trust estate (made up of properties of the Horse Heaven Irrigation District), then proceeded to hold:

In such cases, in the absence of prescribed statutory procedure, a court of equity has inherent power to administer the trust estate and see that it is distributed to the persons who are entitled to share in it; and the court may proceed either upon its own motion or upon the application of the trustees or beneficiaries.

Moreover, as Judge Driver ruled on June 1, 1946 (R. 288-289); see Appendix "B", this brief):

the matter of liquidation of an irrigation district is primarily a matter for the State Court, and while I appreciate the fact that in a condemnation proceeding not only must the value of the property taken be determined but also the persons who are entitled to receive it, nevertheless, it seems to me, that in this situation the person entitled to receive the compensation is the irrigation district, a legal entity. And if I should attempt to determine who is entitled upon liquidation of that corporation to its assets, I would be simply dissolving an irrigation district in Federal Court, which is not altogether necessary in a condemnation case or a part of it, as I view it. Certainly, if the Government took over the assets of a private corporation, we would not undertake to

pay the award to the stockholders. It would be paid to the corporation even though all of the property of the corporation might be taken in the motion (*sic*), and it would be the duty then of the corporation to determine who is entitled to its assets; and I think that is the situation here.

That ruling by Judge Driver is in accord with applicable decisions of the federal courts. In *United States v. 25.936 Acres of Land, Etc.*, 153 F. (2d) 277, 279 (CCA 3rd 1946), the court stated:

* * * No New Jersey court has passed upon the precise questions of law presented by the circumstances at bar. It is appropriate, therefore, to require the Borough and Corn Products to seek an answer in the courts of New Jersey either under the New Jersey "uniform declaratory judgments law", N. J. S. A. 2:26-66 et seq., or otherwise. See *United States v. 150.29 Acres of Land. Etc.*, in *Milwaukee C., Wis. supra*, 7 Cir., 135 F. 2d at page 881, and the approving reference to the procedure therein indicated by the Supreme Court in *Spector Motor Co. v. McLaughlin*, 323 U. S. 101, 105, 106, 65 S. Ct. 152.

The Government's contention regarding the District's properties is based on the Government's construction of state law—a construction of state law that the Washington court certainly has never applied to circumstances like those of the Priest Rapids Irrigation District. Furthermore, the District's defense against the Government's contention places in issue the constitutionality of the condemnation adjudication sought by the Government. And as

the Supreme Court stated in its opinion in *Spector Motor Co. v. McLaughlin*, 323 U. S. 101, 105, 65 S. Ct. 152, 89 L. Ed. 101, "we have insisted that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law."

However, it is sufficient refutation of the Government's contention and of that part of the Schwellenbach formula which is adverse to the District, to refer again to the well settled law of the federal courts that the substantive law requirement of just compensation guaranteed by the Fifth Amendment can not be modified by reason of a state statute or a state court decision (pp. 45-46, *supra*).

It is clear that the district court's judgment (R. 1147-1158) is in error to the extent that it deprives the District of \$195,345 of the value of the District's irrigation properties as determined by the jury. It is manifest that the lower court's judgment should be reversed with instructions to enter a deficiency judgment in favor of the District in the amount of \$668,701, together with interest as specified in the District's proposed judgment (R. 1138, at 1146).

ANSWER TO BRIEF FOR THE UNITED
STATES, APPELLANT

I

*Government's Basic Contention Seeks to Avoid
Constitutional Question of Just Compensation
and Ignores Record of What Government Did.*

The basic contention of the Government is stated in its brief¹ on appeal (App. Br. 10) as follows:

By acquiring at fair market value all of the lands in the Priest Rapids Irrigation District the United States acquired the beneficial title to the properties held by the district for the owners of land in the district and was entitled to the legal title thereto without a further payment for the benefit of the former landowners.

That statement of the Government's basic contention, and the argument made in support of it (App. Br. 10-22), show that the Government seeks

¹ The "specification of errors" in the Government's brief (App. Br. 10) does not comply with rule 20 (d) of this Court, particularly as regards Nos. 2 and 3 of the Government's point on appeal (R. 1169, 1181) which were directed at the district court's overruling a Government objection to introduction of testimony and refusing to give an instruction to the jury requested by the Government. More significantly, perhaps, the Government's general specification of error No. 1 avoids restatement of the Government's points on appeal Nos. 2 and 5 (R. 1169, 1181), in which the Government refers to properties of the District "acquired by the United States through the filing of the declaration of taking in No. 128-99." Acquisition "through the filing of the declaration of taking in No. 128-99" is a theory inconsistent with the theory of the Government's basic contention as stated in its brief (App. Br. 10).

to avoid and beg the issue of constitutional law raised by the "acquisition policy established by this [War] Department and approved by the Department of Justice," (R. 83) and involved in the proceedings in the district court. It ignores what the record shows—that the Government took the District's properties in condemnation. It ignores the constitutional requirement that for property which it takes for public purposes the Government must pay "just compensation"—the full and perfect equivalent in money of the property taken (see pp. 26-29, *supra*).

The Government states in its brief that "By acquiring at fair market value all the lands in the Priest Rapids Irrigation District the United States acquired the beneficial title to the properties held by the District for the owners of land in the District"—but the record shows that in acquiring the lands within the District the Government took fee title in said lands, subject to easements of the District (R. 72). And the record shows that on the Government's objection the district court kept from the juries, which determined the value of said lands, any evidence of the value of the District's properties to which the Government contends it acquired beneficial title by acquiring the lands within the District (R. 84-99, 100-105). The record also shows that when the Government, in the October 1943 proceedings regarding landowners' tracts, suc-

cessfully made that objection it contended (R. 96) "that there is no property interest in the assets of the District as to the lands or the owners of the lands until such time as the District has been dissolved under the provisions of the laws of the State of Washington, and that at the time of the taking there was no dissolution of the District * * *."

At the same time and in the same sentence (R. 96) the Government played both ends against the middle and contended that any equitable right, of the lands within the District or of the landowners, in the District's properties passed with the title to the lands within the District and that the Government thereby acquired any equitable interest which the lands within the District, or the landowners, may have had. But the record shows that Judge Schwellenbach in his memorandum opinion (R. 175-181, at 178; Appendix "A" this brief) stated that he had ruled against the landowner's attempt to assert his claim to a proportionate share of the District's properties for the reason, among others, that the land owner "*was not the owner of the legal title to the District assets. He had no right to assert a direct claim to his proportionate share.*" (Italics added)

The record shows that, again, at the trial of No. 128-99, the Government objected to the introduction and reception of any and all testimony as to the value of the District's properties (R. 387-390). And the Government in its points on appeal (No. 2, R.

1169, 1181) states that the district court's overruling of that objection was error. — It is apparent, from the 1182 page record and the Government's brief, that the Government has sought to avoid *any* judicial determinataion of value of the District's properties taken under the "Second War Powers Act. 1942."

A. *Answer to Government Argument I, A*

In the section of its brief (App. Br. 10-12) headed "The United States did not cause the former landowners to believe they would receive more than the fair markt value of their lands," the Government makes the point that its basic contention was made known before the first trials regarding landowners' tracts. That point may be conceded, but the Government's brief does not reflect what the record shows.

The procedural record of the proceedings is contained in the Transcript of Record. And certainly Judge Schwollenbach's statement during the April 26, 1944 proceedings (R. 100-105, at 102)—to which the Government's brief does not refer—and Judge Schwollenbach's memorandum opinion (R. 175- 181; Appendix "A" this brief) are controlling, rather than an affidavit of Government counsel, executed after the Government took this appeal, and presented for the first time in the Government's brief. A detailed account of the pertinent proceedings *as shown by the record* is set forth in part III of this brief of the District, pp. 35-45, *supra*.

The Government's brief (App. Br. 10-12) possibly argues inferentially that a judicial determination of just compensation for the District's properties could have been had only in connection with the trials regarding the individual landowners' tracts. But any such inferential argument can not stand in view of the condemnation proceeding filed February 23, 1943 (R. 2-10) being one action, a single suit. *Atlantic Coast Line R. Co. v. United States*, 132 F. (2d) 959, 962 (CCA 5th 1943). Nor can it stand in view of the limited character of property covered by the amended petitions and declarations of taking regarding individual farm tracts (R. 72). Nor can it stand in view of the Government's position in October 1943 that judicial determination of the value of the District's properties could not be had in connection with trials regarding the landowners' tracts for the reason that there could be no property interests in the assets of the District as to the individual tracts or the owners thereof until such time as the District has been dissolved under the laws of the State of Washington (R. 96). Nor can any such argument stand in view of the record (R. 103-104) that at the first trial in October 1943 it was agreed that the Government would proceed expeditiously with the filing of a declaration of taking as to the properties of the District.

B. *Answer to Government Argument I, B*

In further attempted support of its basic conten-

tion, the Government argues (App. Br. 12-14) that "The United States has already paid the former landowners the fair market value of their lands." That argument is like the Government's argument which was rejected in *United States v. 25.4 Acres of Land*, 71 F. Supp. 248, 251 (D. C., E. D. N. Y. 1947), where the Government sought to avoid paying just compensation to public utilities on the ground that individual damage parcels which had been serviced by the public utilities had been valued as parcels having service from the water, gas and electric utilities. Further and complete answer to that argument appears in part III of this brief, pp. 35-45, *supra*.

The Government (App. Br. 12-14) has reiterated its factual-legal argument, as Government counsel with commendable candor predicted during the trial of No. 128-99 (R. 738-739):

The contention of the Government has been and it has been reiterated and unquestionably will be again, that the value of those District facilities as irrigation facilities necessarily are reflected in the value of the land.

It was because of that reiterated contention that the District, during the trial of No. 128-99 (R. 729-745) offered to prove from the records in No. 128 that for all of the lands within the District, including all of the improvements on said tracts as well as any crops growing thereon, the Government paid only \$630,960.80 (R. 741-743). — The offer of proof

was made in the absence of the jury and for the purpose of presenting to the court evidence which would refute that factual-legal contention of the Government, when compared with the value of the District's properties to be determined by the jury's verdict and answer to special interrogatory in No. 128-99. (The jury's verdict and answer showed the total value of the District's properties to be \$839,-201 R. 1131-1132). The Government objected to that offer of proof (R. 743); and the court sustained the objection and rejected the offer on the substance of the offer (R. 745), the court recognizing and assuming that the documents from the voluminous district court file in No. 128 could and would be brought into court to show by piecemeal documentary evidence what compensation the Government had paid for each individual tract of land within the District.

Notwithstanding its objection to that offer of proof in the district court, the Government in its brief on appeal prints as an appendix (App. Br. 27-31) and quotes at length from an affidavit of Government counsel. By that affidavit and for the first time upon this appeal, the Government offers "ex parte" evidence as to the compensation paid by the Government for land within the District. — Obviously, the Government's use of Government counsel's affidavit is strikingly inconsistent with the Government's objection in the district court to evidence of the same character and offered, in the

absence of the jury, as having bearing on the same point.

The Government in its brief italicizes Government counsel's affidavit statement that in the trial of the individual tracts the landowners were permitted to show "all other factors which might be legally shown as affecting the value of the premises as between a prospective seller and a prospective buyer." (App. Br. 13) Yet, the same Government counsel in the October 1943 trial of individual tracts successfully contended that evidence of the value of the District's properties could *not* be legally shown (R. 96). And in the trial of No. 128-99 in the district court, the Government contended that such evidence could *not* legally be shown (R. 387-390). — In other words, the Government has contended throughout the various proceedings, in the condemnation action No. 128, that the Government should be permitted to take the District's properties without *any* judicial determination of the value of the properties taken.

The Government's use in its brief on appeal of "evidentiary" matter which is not in the record on appeal, and which the Government did not offer in the district court, is clearly contrary to federal court decisions. As this Court held in *Hovland v. Smith*, 22 F. (2d) 769, 770 (CCA 9th 1927):

The appellant relies on two affidavits, which in his brief he presents to this court; but they are not included in the bill of exceptions, and

it must be presumed that they were not brought to the attention of the court below. Such being the case, they have no place in a review of the judgment of that court.

To the same effect are this Court's decision in *Leonard v. Field*, 71 F. (2d) 483, 487 (CCA 9th 1934), and the decisions in *Bono v. United States*, 113 F. (2d) 724, 725 (CCA 2nd 1940) and *Drake v. General Finance Corp. of La.*, 119 F. (2d) 588, 589 (CCA 5th 1941).

C. *Answer to Government Argument I, C*

The Government further argues (App. Br. 14-17) that "The properties of the District were wholly devoted to irrigation purposes and were inseparable from the lands they served." This argument is inaccurate; and even if it were accurate it would not be relevant to the question of whether the Government can take the District's properties without payment of just compensation.

The irrelevance is shown by an analogy and by federal court decisions. The railroad property of the Chicago, Milwaukee, St. Paul & Pacific Railroad Co. taken by the Government (R. 17-18, 128c) was devoted to railroad purposes, rendering common carrier service to the lands within the District and adjacent lands. Incidentally, that railroad property was so tied to servicing that area that, by law, it could not be abandoned by the railroad company, unless the Interstate Commerce

Commission granted permission (Act of Feb. 28, 1920, c. 91, sec. 402, 41 Stat. 477, 49 U. S. C. 1 (18)). Furthermore, the value of that railroad property depended upon traffic to and from the lands it served; and, in turn, the value of lands within the District reflected the availability of that railroad service. But the Fifth Amendment required just compensation for the railroad property taken by the Government, measured by the value of the railroad property. *Brooklyn Eastern Dist. Terminal v. City of New York*, 139 F. (2d) 1007, 1013 (CCA 2d 1944), cert. den. 322 U. S. 747; *United States v. 25.4 Acres of Land*, 71 F. Supp. 248, 251 (D. C., E. D. N. Y. 1947). See also, *United States v. Buxton Lines, Inc.*, CCA 4th, decided February 3, 1948, 16 L. W. 2403.

Likewise, as regards the District's properties, whether used to render irrigation or commercial power services.

The inaccuracy of the Government's argument is apparent upon examination of the laws of the State of Washington which authorize the District's board of directors to "develop and to *sell*, lease, or rent the use of water or power * * * at such prices and on such terms as it deems best" (*Italics added*) (Rem. Rev. Stat., sec. 7428, L. '21, p. 432, sec. 5) and which authorize the District to sell surplus electrical energy "to municipalities, public and private corporations and individuals, on such terms and conditions as the board of directors shall de-

termine" and to make such sales for periods longer than ten years with ratification by a District election (Rem. Rev. Stat., sec. 7417-2, L. '33, p. 181, sec. 1).

Incidentally, as regards the Government's statement that further irrigation water requirements "would have to be satisfied by use of additional power" (App. Br. 15), it should be noted that the record shows otherwise. Quite a few farmers within the District obtained their water supply by pumping from wells, using power supplied by the Pacific Power & Light Company (R. 344; see also, R. 98).

Furthermore, the question of what increase in the District's irrigation pumping load there might be within the reasonably near future was properly left to the jury (R. 1106). Moreover, neither that charge to the jury nor the instructions regarding percentages about which the Government argues (App. Br. 16-17) was made a point on appeal (R. 1169-1181) or specified as an error (App. Br. 10).

The Government's speculative argument ignores both the realities of the situation, and the law. As the Supreme Court in *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 344, 13 S. Ct. 622, 37 L. Ed. 463 (1893) had occasion to state, the Government in condemnation "is proceeding not as the assignee, successor in interest, * * * but by virtue of its own inherent supreme power." To

paraphrase the district court's opinion in *United States v. Gossler*, 60 F. Supp. 971, 973 (D. C., D. Ore 1945), a case of some similarity—the question is not the legal relationship between the landowners and the District, but whether the Government took the District's properties for which the condemnor must pay. In view of *United States v. 531¼ Acres of Land*, 139 F. (2d) 244, 277 (CCA 2nd 1943), cert. den. 322 U. S. 730, it is abundantly clear, not only that the Government must pay for the District's properties a just compensation award, but also that the award “stands as a substitute for the land,” and that “*condemnation should affect the rights of the parties having interests in respect to the land taken only so far as necessary to assure the sovereign's title.*” (Italics added)

Under the Government's theory, if a future “Hanford project” required acquisition of all the property within a municipality or public utility district which owned the electric utility serving it, then upon acquisition by the Government of the privately owned lands at values which reflected the value of availability of electric service but which did not reflect the value of the electric power system owned by the municipality or public utility district, the Government would acquire the electric power system without paying any compensation for it.—But the Fifth Amendment's requirement, that the Government pay just compensation for property it takes, does not depend upon own-

ership of an electric power utility or irrigation utility being in someone other than the owners of the lands served or an organization of the landowners. The Government must pay just compensation for property it takes.

D. *Answer to Government Argument I, D*

In its argument that "In parting with their lands in the District, the former owners divested themselves of all interest in properties held beneficially by the District for landowners" (App. Br. 17-20), the Government places untenable reliance on the state court decision in *In re Horse Heaven Irrigation District*, 11 Wn. (2d) 218, 118 P. (2d) 972 (1941). As pointed out in part IV of this brief, the constitutional requirement of the Fifth Amendment cannot be avoided by reliance on a state constitution, statute or court decision; and furthermore the statutes involved in the Horse Heaven case are inapplicable to the Priest Rapids Irrigation District (pp. 45-51, *supra*).

The fallacious character of the Government's argument is further demonstrated by applying the Government's "acquisition policy" in No. 128-99 to the situation of the Horse Heaven Irrigation District.

In 1938 the Horse Heaven Irrigation District (due to foreclosures effected in depression years) owned net assets of approximately \$385,000 in value (11 Wn. (2d) 218, 222, 224, 118 P. (2d)

972); and in 1938, although more than twenty years old, that District had not irrigated any of its lands. In view of that latter fact, plus the fact that it had no outstanding bonded indebtedness, it qualified for dissolution and was dissolved under Rem. Rev. Stat. 7527-1, L. '39, ch. 149, p. 447.

If the Government's "acquisition policy" were the law, the Government in 1938 could have taken the Horse Heaven District's properties and all lands within that District; could have proceeded with declarations of taking covering those lands within that District which were owned by others than the District; could have acquired said lands at merely their "dry land" values; could have kept from the juries any evidence as to the value of the Horse Heaven District's properties; and could thereby have become the owner of the District's properties (worth \$385,000) which were taken by the Government without payment of any compensation for the District's properties. According to the theory the Government advances in support of its "acquisition policy," the \$385,000 value of the Horse Heaven District's properties would have been reflected in the "dry land" values placed on the other lands within that District.

The Fifth Amendment prohibits any such legal legerdemain. The Horse Heaven case could not be used by the Government for the purpose of such legal legerdemain even in a Horse Heaven type of situation. Obviously, that case cannot be used for

such a purpose against the Priest Rapids District which is not within the purview of the state statutes involved in the Horse Heaven case.

E. *Answer to Government Argument I, E*

The Government argues that: "The Government's liability to the landowners would have been the same if the District-held properties had been taken before rather than after the privately owned lands" (App. Br. 20-22). Such argument assumes or implies that, in fact, the Government took the District's properties after the privately owned lands. — However, the Government undertook condemnation of *both* the District's properties and the privately owned lands in one and the same action, No. 128, on February 23, 1943 and April 22, 1943; and on the same dates and in that action the Government obtained orders granting the right of immediate possession to all of the property included in the perimeter descriptions of the areas being condemned (R. 2-32). Pursuant to those orders, the Government in fact took actual possession of the District's irrigation properties on April 1, 1943 and the District's power properties on October 1, 1943 (R. 307). From time to time amended petitions and declarations of taking covering privately owned tracts were filed, as shown by the amended petition No. 128-43, filed on August 26, 1943 (R. 70-80) and by Judge Schwellenbach's memorandum opinion (R. 175-181, at 177).

The Government's argument (App. Br. 20) commences: "In acquiring the privately owned lands *before it sought legal title to the property held by the District*, the United States adopted the method * * *" (Italics added). The italicized clause quoted refers to the amended petition and declaration of taking No. 128-99 filed on May 12, 1944 (R. 106-130) and to the Government's attempt to use the ancillary, declaration of taking procedure as a device for carrying the Government's "acquisition policy" into effect. — Part II of this brief of the District, pp. 30-35, *supra*, shows that attempt to have been unconstitutional and contrary to decisions of the federal courts.

Perhaps it is because of the Government's position and the court's decisions in *Comparet v. United States*, 164 F. (2d) 452, (CCA 10th 1947), and *United States v. Block*, 160 F. (2d) 604, 607, (CCA 9th 1947), that the Government now argues (App. Br. 20-22) that it could have taken the District's properties without a judicial determination of just compensation for those properties, regardless of whether the Government took them before or after it took the privately owned lands within the District. — In view of its position in those cases the Government cannot, without glaring inconsistency, deny that it took the District's properties on February 23, 1943 and April 22, 1943, when by court order it acquired the right of immediate possession, or on April 1, 1943 and October 1, 1943 when it

took actual possession. See also *United States v. Certain Lands*, 46 F. Supp. 800, 802 (D. C., E. D. Iowa 1942); *United States v. Bauman*, 56 F. Supp. 109, 112 (D. C., D. Ore. 1943).

Compensation to the Chicago, Milwaukee, St. Paul & Pacific Railroad Company for its railroad properties covered by the April 22, 1943 petition and order in No. 128 (R. 17-18, 28) could not be less than the guaranteed full equivalent, regardless of whether the lands in its service area, acquired in the same condemnation action No. 128, were actually occupied by the Government or were covered by declarations of taking before or after the railroad property. And vice versa. Likewise as regards any other utility properties. Likewise, as to the District's properties and the privately owned lands within the District, both acquired in the same condemnation action No. 128. See *United States v. 25.4 Acres of Land*, 71 F. Supp. 248, 251; pp. 42-45, *supra*.

II

The Government Cannot Properly Complain of the Court's Judgment Re the District's Irrigation Properties.

The Government, in part II of its brief (App. Br. 22-26) contends that "In any event the judgment upon the award should have been reduced by the amount of estimated just compensation deposited with the declaration of taking."

The Government's argument (App. Br. 23-24) that the \$170,500 was deposited by the United States "for or on account" of the \$473,356 awarded the District is contrary to the record. In its amended petition No. 128-99 the Government, after alleging that it had become owner of the District's properties subject to the lien of the District's bond debt, alleged that the \$170,500 deposited in court with declaration of taking No. 128-99 would be enough, together with the District's own funds, to pay and discharge the District's bonded indebtedness (R. 118). Furthermore, the Secretary of War in his letter of May 4, 1944 frankly stated, regarding the \$170,500: "This compensation represents the outstanding indebtedness of the District" (R. 81). He further stated in his letter (R. 82) that he believed the \$170,500 he recommended for deposit would be sufficient, together with the District's funds, to pay the District's indebtedness.

The Schwellenbach formula, adopted and applied by Judge Driver, accepted the Government's "acquisition policy" as to the District's irrigation properties but rejected it as to the District's non-irrigation properties.

The jury, in answer to the special interrogatory, determined that the irrigation properties on April 1, 1943 had a value of \$365,845 (R. 1132). Those were the properties of the District which the Schwellenbach formula gave to the Government under the Government's "acquisition policy" of tak-

ing the District's properties subject to the lien of the District's bonded indebtedness. That indebtedness, as provided by Washington statute, was a lien on the District's irrigation properties (Rem. Rev. Stat. sec. 7434, L. '21, p. 444, sec. 10).

Whether, in the trials regarding privately owned lands, submission to the juries of evidence of bond assessments and of the bonded indebtedness caused the verdicts to be lower than they would have been otherwise (R. 1135); App. Br. 24-25) does not affect the propriety of Judge Driver's judgment that the \$170,500 should be handled in accordance with the Government's "acquisition policy" and in connection with the irrigation properties which the Government received under that "policy" as adopted and applied by the district court.—However, the Government's statement that it "cannot concur in the idea" that such evidence reduced the awards to private landowners (App. Br. 25) is strange enough to be noted. That statement is from the same Government which contends that awards to the private landowners did reflect the value of the District's properties, even though evidence of the value of the District's properties was *not* introduced.

In arguing against the \$170,500 being used in accordance with its "acquisition policy" and in accordance with its amended complaint in No. 128-99, the Government states (App. Br. 25) that it might have deposited—"as would have been consistent

with its position—one cent.” And from the suppositious deposit of 1¢, the Government spins its argument. There is no explanation of how a 1¢ deposit, instead of its \$170,500 deposit, would have been consistent with the Government’s position.

The Government states regarding the \$170,500 that: “Something has turned out badly” (App. Br. 25). But not badly for the Government. The Government got the District’s irrigation properties, which the jury determined to have a value of \$365,845, for only \$170,500.

CONCLUSION

For the foregoing reasons in support of the District’s cross appeal and in answer to the brief of the Government, appellant—it is manifest that upon the District’s cross appeal the judgment of the district court should be reversed and the cause remanded with directions to enter a deficiency judgment in the sum of \$668,701 together with interest as specified in the District’s proposed judgment (R. 1146); and that upon the Government’s appeal, the judgment of the district court, in those respects as to which the Government appeals, should be affirmed.

Respectfully submitted,

MOULTON & POWELL

Kennewick, Washington

J. K. CHEADLE,

Spokane, Washington

*Attorneys for the Priest Rapids Irrigation
District, Appellee and Cross Appellant.*

Priest Rapids Irrigation District (R. 175)

APPENDIX "A"

In the District Court of the United States for the
Eastern District of Washington, Southern
Division.

No. 128-100

UNITED STATES OF AMERICA,
Petitioner.

vs.

CLEMENTS P. ALBERTS; RICHLAND IRRIGATION DISTRICT, a corporation of the State of Washington, et al., STATE OF WASHINGTON, et al.,

Defendants.

and

No. 128-99

UNITED STATES OF AMERICA,
Petitioner.

vs.

CLEMENTS P. ALBERTS; PRIEST RAPIDS IRRIGATION DISTRICT, a municipal corporation of the State of Washington, et al.,

Defendants.

MEMORANDUM OF THE COURT

These two Irrigation Districts have set up in their answers allegations which raise the issue as to the right to compensation for the assets owned by the Districts. To each affirmative answer, the petitioner has interposed a demurrer. The demurrer in each case is identical.

The petitioner first contends that the persons signing the answers are no longer qualified so to sign

(R. 176)

United States of America vs.

because the Irrigation Districts have been out of business for three years and held no elections. Assuming *arguendo* the correctness of petitioner's contention, this does not mean that the property owners within the District are not entitled to defend this action. It is agreed by the counsel that, under the Washington Statutes and Decisions, an irrigation district holds legal title to the property owned by the District, which title it holds in trust for the owners of land within the District who have a beneficial interest. The situation parallels that presented in *State ex-rel Pryor vs. Paul*, 5 Wash. 2d 90. In that case, the Horse Heaven Irrigation District had been dissolved through the statutory process. It owned a considerable amount of property. The Supreme Court approved the action of trial court in appointing [143] the directors of the District to proceed as Trustees for the creditors and property holders of the District and account for the property and money to the Court. It is elementary that a trust will not fail for the lack of a trustee so that, even if we assume that the State Statute controlling the distribution of assets upon the dissolution of an irrigation district is deficient, the Court would have not only the right but the duty to appoint a trustee or trustees to represent the beneficiaries or land-owners whose property has been taken.

I see no merit in petitioner's second contention that there is a defect of parties defendant. The petitioners selected the parties defendant. This is the first time in my experience that I have heard of a plaintiff complaining that the defendants of its choice were not proper.

The petitioner's third attack upon the affirmative answers is that they fail to state facts sufficient to constitute a defense. I have considered all of the cases cited by counsel on both sides. My failure to discuss them in no way indicates lack of consideration of them. The fact, however, is that we have presented here an anomalous situation in which very little benefit can be derived from other cases. These irrigation districts, on February 23, 1943, owned certain assets. They held such assets in trust for the landowners. On that date, an order for immediate possession of all the property of the Districts and within the Districts was signed. From time to time thereafter, declarations of taking were filed covering various tracts within the Districts. After legal title to all the land in the Districts had been acquired by the petitioner, the property involved here was taken by the Government by filing declarations of taking. It seems to me it would be grossly unfair, if these landowners owned a beneficial interest in the District property, to deprive them of their opportunity for compensation for such property simply because the Government chose to take their land before it took the legal title which the Districts held in trust for the owners of the land. To reach such a conclusion would do violence to my conception of the obligation which the Government owes to its citizens whose property it takes. The Government had the power to control the litigation. The landowner was afforded no choice. For the Government to seek to exercise its power to the [144] substantial disadvantage of the landowner is unjust, inequitable and

(R. 178)

United States of America vs.

improper. I know that a legal argument can be made to the contrary. Such argument can be buttressed by well-considered opinions of the appellate courts. Viewed as a whole, however, it must be admitted that the Government never tried to do this before and that there is no case which covers the situation presented here.

The fact that most of these cases involving the lands themselves have been tried should not prevent the landowners from receiving that to which they are entitled out to the Districts' assets on the theory that a condemnation case can only be tried once and that, in these proceedings, the landowners are attempting to take a second bite at the apple. The fact is that, in the first case which was tried, the landowner attempted to assert his claim to his proportionate share in the District's assets, the petitioner objected and I rule against the landowner. The basis of this ruling was that in the trial for the purpose of determining the compensation to be paid for a separate tract, there was no room to try out also the value of that landowner's proportionate share of the District assets. He was not the owner of the legal title to the District assets. He had no right to assert a direct claim to his proportionate share. Furthermore, as a matter of procedure, if I had permitted each landowner to assert his claim in each separate trial, it would have resulted in chaos and interminable delay as a consequence of which these cases never would have been completed. Imagine the situation in each case of having the voluminous testimony as to the value of District

assets presented to each separate jury. Furthermore, it would have resulted in an absurd situation because the landowner in one case would have a jury fixing one value upon the District's assets and then the jury in the next case might place an entirely different value upon the District's assets. The awkwardness and the confusion which would have resulted was realized by counsel on both sides and dozens of cases have been tried since with the understanding that, at some time, the question of the right of the landowners to their proportionate share of the value of the District assets would be thrashed out.

On the other hand, the landowners are not entitled to compensation for that portion of the District assets which was valuable only for irrigation [145] purposes. In each one of the trials and in all of the appraisals, the value of the separate tracts was based upon the proposition that they were within the irrigation district and had irrigation water available. Verdicts and settlements which have been made in these cases have been substantial. They have been based upon the land valued as irrigated land. For the owner of the lands now to receive compensation for the District assets which were devoted to irrigation purposes would amount to double compensation. Furthermore, the Government has paid out to the holders of the bonds in the Priest Rapids Irrigation District \$170,500.00. It has paid out to the holders of the bonds of the Richland Irrigation District \$97,000. Clearly it is entitled to offset the amount thus paid out against

(R. 180)

United States of America vs.

any claim for compensation for the District assets.

It seems to me that what must be done in this case is that the Districts set up in their answers their contention as to the value of that portion of the assets in each instance which is not applicable to irrigation purposes and make claim for that amount after giving credit for the sums the petitioner expended in the payment of District obligations. While some difficulty may be encountered in making such allocation, I am sure it is not insuperable. I had personal experience in working out the formula for the allocation as to power and flood control and navigation on the Bonneville Dam. I know that a similar formula was worked out as between power and reclamation on the Grand Coulee Dam. While I do not attempt now to decide the question, I am frank to say, as I look at the answer of the defendant Richland Irrigation District, I do not see how it can be entitled to any compensation. It was exclusively an irrigation district and its assets were exclusively used for irrigation purposes. Any assets listed which were not so used were more than covered by the \$97,000 which the petitioner paid. On the other hand, the Priest Rapids District, according to its answer, owned non-irrigation assets valued substantially in excess of the amount of the bond money paid on its behalf.

I will sustain the demurrer to each affirmative defense granting to the defendants, however, the right to file a second amended answer embracing the theory heretofore outlined by me. The prayers in the answers should also include the request that the Court appoint some person or persons as trus-

Priest Rapids Irrigation District

(R. 181)

tees to [146] liquidate the assets of the Districts and account for the money received to the Court for distribution to those entitled to such money.

L. B. SCHWELLENBACH,

United States District Judge.

CC: to B. H. Ramsey, Special Assistant to the Attorney General, 520 Miller Building, Yakima, Washington; and to Messrs. Moulton & Powell, Attorneys at Law, Kennewick, Washington, this 21st day of June, 1945. ECL Dep. Clerk.

Filed June 21, 1945.

Priest Rapids Irrigation District

(R. 279)

APPENDIX "B"

In the District Court of the United States for the
Eastern District of Washington, Southern
Division.

No. 128-99, 128-100

UNITED STATES OF AMERICA,

Petitioner,

vs.

CLEMENTS P. ALBERTS, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS RE ORAL
OPINION UPON CONCLUSION OF AR-
GUMENTS ON MOTIONS AND DEMUR-
ERS ON 6/1/46.

Be it remembered:

That the matter of argument of counsel upon
motions and demurrs in the above entitled cases
came regularly on before the Hon. Sam M. Driver,
Judge of the United States District Court for the

(R. 280)

United States of America vs.

Eastern District of Washington, beginning on Wednesday, May 15, 1946, at Yakima, Washington, and resumed on Friday, May 31, 1946, at Spokane, Washington; Mr. Bernard H. Ramsey, appearing as Attorney for the plaintiff; and Moulton & Powell, Mr. Charles L. Powell, of counsel, together with Mr. J. K. Cheadle, appearing for the defendants herein.

Whereupon, after the conclusion of argument of counsel, the Court made the following decision:

The Court: This matter has been so thoroughly and extensively argued with about five hours of argument here in addition to the argument we have had at Yakima, that the Court will merely adopt one side here and it will not be necessary to take a great deal of time in stating the Court's view.

In the first place, I think the motions directed against the state proceedings which the Court took under advisement at Yakima should be taken up first. The Court has gone quite thoroughly into this matter of the Federal Court enjoining proceedings in the State Court, and it seems to me that a Federal Court should not enjoin State proceedings unless it is necessary to protect property that is within the custody of a Federal Court, or to protect proceedings that are an action in rem or quasi in rem. The Federal Statute 28 U. S. C. A. 379 provides that an injunction shall not be issued by the Federal Court to restrain proceedings in State Court except in certain cases arising out of bankruptcy. [220]

There has been a well-defined exception grown up to that statute, another exception other than in bankruptcy proceedings, by judicial decisions, and that is known as the exception in the res cases, and is regarded as a rule of necessity to be sparingly applied. I think that is particularly apparent from the recent case of *Tousey vs. New York Life Insurance Co.*, 314 U. S. 119, in which Associate Justice Frankfurter wrote the opinion and detailed the history of this statute, and defined the exception which can be applied to its policy. He pointed out that it is a very well defined public policy announced by Congress in that statute that there shall be as little conflict and as much comity established as possible, at least as far as Federal Courts are concerned.

The only exception that could apply to that statute is the res exception. That is where an action in rem is brought in Federal Court and the Court will then enjoin any subsequent action or proceedings in State Court which would interfere with the Federal Court's jurisdiction over and control of the res.

This particular case which is before the Court is without question an action in rem. It is an action brought to condemn certain lands and properties of the irrigation districts and the owners of land within the districts. However, it seems to me that the res of this action does not go beyond the particular property which is covered by the condemnation action which is taken under the order of possession and declaration of taking in these cases.

(R. 282)

United States of America vs.

The funds in the possession of the county treasurer, who is ex-officio treasurer of the districts, have not been covered in any way by these condemnation proceedings. They are not covered, as I understand it, by any declaration of taking. It is property that is not part of the res in this Court. That became fairly apparent when the Court asked the question and it could not even be stated what the amount of the funds was that remained on deposit with the county treasurer. And after all we must remember that these irrigation districts are not only corporations of the State of Washington, but they are municipal corporations of the State of Washington, and their officers in a sense are municipal officers of a subdivision of the State of Washington; and it is peculiarly appropriate, it seems to me, that the management of their affairs should be left to the State [221] Court jurisdiction insofar as it may be done without interference with the proceedings in this Court.

I might say this: I think that both sides concede here, or seem to concede at least, that regardless of whether these irrigation districts have been stripped of all of their assets so far as the condemnation case is concerned, other than the bare legal title as has been stated, nevertheless those irrigation districts are legal entities. They have never been extinguished as legal entities, and, certainly, they could not be extinguished because the circumstances have made it impossible to carry on their elections re-elect their directors.

I notice in ruling upon the demurrers of the Government in those state cases the Superior Court Judge for Benton County indicated that he regarded these old directors or holdover directors of these districts as de facto directors of these districts, and indicated that that is what that Court would hold. But, in any event, it seems to me these districts which have been brought into Court through action of the Government would have the right to defend the action of the dissolution; and they should have the right to use funds which are not in this Court as part of the res of these proceedings for the purpose of making that defense. Of course, it will be assumed, and I think should be assumed by this Court, that the Superior Court of Benton County will not properly and will not permit the assets of the corporations which may be under the state court's control to be wrongly used and dissipated improperly, and that that court will not seek to interfere with the res of these proceedings.

For the reasons stated, I do not think further elaboration is necessary. The motions of the Government for appointment of receivers for the irrigation districts and for injunction to restrain prosecution of the actions in the Superior Court of the State of Washington will be denied. As I understand it, there is actually in fact a separate motion for appointment of receiver and for an injunction as to both irrigation districts, there being two cases in Benton County which involve each of these districts.

(R. 284)

United States of America vs.

Mr. Cheadle: Yes, your Honor. Is that not correct, Mr. Ramsey?

Mr. Ramsey: Yes.

The Court: Now, with reference to the demur-ers to the amended answers [222] which have been just recently argued before the Court here, I think both sides should be complimented for the manner in which these cases have been presented. They certainly have been thoroughly presented and on the Government's side there is a very strong legal basis for the Government's position. It is a matter of cold logic for the Government's position. The Government's position is almost unanswerable, it seems. But we have here a peculiar situation. If there has been a case before where the Government has taken over the entire irrigation system and all of the lands of the system and all of the works and properties of the district in one stroke, as has been effected here, that case has not been called to the Court's attention.

It seems to me that it is unfortunate that this case having been pending here since February, 1943, over three years, that this basic question, which is a very difficult and trying and unique question, has not been decided by the Circuit Court of Appeals. I am not attempting to place the blame, certainly, but it would surely lighten the burden of this Court and the task of the litigants because it is a very difficult and unique situation that is presented here to me that has grown out of this peculiar situation.

I think that this litigation should be regarded as a whole or, I should say, interrelated as to each irrigation district.

The Government secured its order of possession in February, 1943. I don't think that the Government thereby took possession or that title passed or that that measured the time when the landowners were entitled to the compensation as of the value taking date; but it certainly did indicate very clearly the intention of the United States to condemn all of the lands and facilities of each of these districts and put in motion the machinery by which that was to be done. And regarding this litigation, the condemnation of each district as at least inter-related and a unit in a sense, my predecessor, Judge Schwellenbach, has already carried on or concluded many of the separate trials involving many of these original landowners, all of them except those that have conveyed by deed. In doing that, his memo as indicated by his ruling upon the amended answers clearly indicates that he adopted a certain theory and line of policy and it was tried in the cases involving the original theory and line of policy and it was tried in the cases involving the original owners.

As I read his memo, his conclusion was that the owners of the district, while, of course, the Government is taking only the fee title which includes everything that goes with the lands, that they were in a sense in a dual position, that they owned irrigated land with the water rights appurtenant thereto for which they were entitled to compensation; and that also in a sense as owners of land in the district they were in the position of stockholders in the district, that is, they were entitled to com-

(R. 286)

United States of America vs.

compensation in their proportionate share of the assets of the district. The assets of the district which enter into and are necessary to the supplying of the water to the land, they are what Judge Schwellenbach referred to, I believe, as the irrigation assets or assets adapted to and used for the supplying of water for the lands. They, I assume, Judge Schwellenbach considered entered into and became a part of the value of the land and the Government compensated the owner for that when they paid him the fair market value of the land as determined by the jury.

Judge Schwellenbach also took it, I assume, that as to the assets of the district which were not used exclusively for irrigation, that they did not enter into the value of the land as determined by the jury, that the owner was entitled to his pro rata share as to the value of those properties not used for irrigation.

As a matter of policy and for convenience, if for nothing else, Judge Schwellenbach decided, and I think properly so, that it was not the proper thing to do to try out in each individual case the proportionate value to which each landowner would be entitled. That would involve, as he pointed out, having the assets determined over and over again by the jury in successive individual cases; and, of course, they would in all probability find difference values in different cases. But, as he pointed out in ruling upon the demurrers to the original answers, he felt that while the landowners were not entitled to receive compensation again for the assets of the districts used for irrigation, as that would be in

effect giving them double compensation, he thought that in all fairness they should have their pro rata share of the non-irrigable assets of the districts.

I suppose I am not bound by what my predecessor has done here but, it seems to me that in all fairness, that since this litigation is so far advanced, at least under this situation it is the fair and proper and equitable thing for me [224] to do to adopt and attempt to apply the formula of my predecessor since he has already acted upon it in these individual cases. I don't think it is fair to change the theory or change the method in the middle of this litigation, considering it as a whole. I can see that it will involve grave difficulties and will not be an easy thing to work out but that is a matter and a bridge that will have to be crossed when we reach it, I suppose.

I think if we may apply the formula—if we may call it that—of Judge Schwellenbach, that the demurrers should be overruled.

It is true that in the Richland case there is only a limited amount of property sold there that is not devoted to irrigation purposes and that it does not exceed the amount of the bond issue. But I think also that applying Judge Schwellenbach's formula even in that case the value of the non-irrigable assets of the district should be passed upon and determined by a jury, and then, if that is determined to be the proper thing to do—I am not passing upon that question definitely now—but if it is determined by this Court to be the thing to do, if they amount

(R. 288)

United States of America vs.

to less than the bond issue and can be applied to the payment of the amount advanced by the Government to buy the bonds, it seems to me that at some stage of these proceedings that if the assets are not sufficient to pay what the Government has advanced, to pay off these bonds, that it should be determined definitely how much has been retired by application of the assets here and how much of an excess that the Government is entitled to that it might have a right to recover or which might be a lien upon other assets not involved in this proceeding.

Now, I think I indicated in the ruling on the motions for injunction and appointment of receiver that it is my view that these irrigation districts as defendants in these actions should be represented by those officers whom the state court decides are entitled to represent them; that the matter of liquidation of an irrigation district is primarily a matter for the State Court, and while I appreciate the fact that in a condemnation proceeding not only must the value of the property taken be determined but also the persons who are entitled to receive it, nevertheless, it seems to me, that in this situation the person entitled to receive the compensation is the irrigation district, a legal entity. And if I should attempt to determine who is entitled upon liquidation of that corporation [225] to its assets, I would be simply dissolving an irrigation district in Federal Court, which is not altogether necessary in a condemnation case or a part of it, as I view it. Certainly, if the Government took over the assets of a private corporation, we would not undertake

to pay the award to the stockholders. It would be paid to the corporation even though all of the property of the corporation might be taken in the motion, and it would be the duty then of the corporation to determine who is entitled to its assets; and I think that is the situation here. And, however, while it may not be necessary to say this, I am inclined to the view at this time that while the state court should determine who is entitled to the non-irrigation assets, that the Government should determine whatever award should be made for the payment of the bond issues. And I think also that the funds should be impounded in this court rather than to be paid directly to the directors of the districts or whoever is representing the districts, before the adjudication is made as to who is entitled to receive the funds.

Now, I have stated the Court's view on that for the reason that it seems to me, although I will be willing to hear from counsel for the defendants here if you care to be very brief, that in my view of the situation it would serve no useful purpose to permit individual landowners to intervene because under my theory of it they are represented by the irrigation districts.

Mr. Powell: That is right.

The Court: They have no legal title to the irrigation district property, and only in case that the districts are not legally and adequately represented or they are not properly represented should they intervene. But it would seem that with the adequate representation in these cases that the landowners

(R. 290)

United States of America vs.

are not entitled to intervene, and upon that reason the Court will deny the motion to intervene. I will hear from you.

Mr. Cheadle: In view of the previous ruling of the Court, we do not wish to be heard upon your denial of the motion for leave to intervene.

The Court: I am going to Yakima tomorrow and will be there until about Thursday of next week. If the orders on my various rulings here have not been worked out by that time, I will be back in Yakima, Monday, June the 17th. I have a public utility condemnation case that is starting the 18th but I will be there by the 17th and from then on for probably two or three weeks, so that I would be available for presentation of these orders during those times.

Filed June 4, 1946. [226]

APPENDIX "C"

[Title of District Court and Cause.]

ORAL OPINION OF COURT, 3/7/47

Be it remembered, that the above entitled cause came on before the Honorable Sam M. Driver, Judge of the above entitled Court, at Yakima, Washington, on March 7, 1947, for entry of judgment upon the verdict of the jury; the petitioner United States of America being represented by Bernard H. Ramsey, Special Assistant to the Attorney General, and the defendant Priest Rapids Irrigation District being represented by Charles L. Powell and J. K. Cheadle, its attorneys; whereupon, the following proceedings were had:

(Argument by Mr. Powell and Mr. Ramsey.)

The Court: I might indicate what the Court's view is. It seems to me that we have to solve these problems presented here today in the light of the

(R. 1134)

United States of America vs.

situation as it exists, and not what might be the situation if this district were in liquidation in this Court, or if the bondholders were coming in for payment of past due obligations.

The Court has endeavored to apply a formula here that would be equitable and fair to both parties in this very unique and unusual situation that is presented. It is one that was conceived by my predecessor, but I have no disposition to try to avoid responsibility, because it seems to me in a very difficult situation it is just about the most equitable thing that could be done. In this situation we have endeavored to segregate the assets of the District not devoted to irrigation purposes from those devoted to irrigation purposes.

Under the judgment which the Court has accepted here, or the view that the Court has taken of the judgment to be entered, the District is to be compensated directly only for a portion of its property, the portion of its property not devoted to irrigation uses. Ordinarily, of course, in a condemnation case the property owner is compensated for the full cash market value of the property. The theory on which this land-owner is compensated for only a portion of the property is that the government has already in effect paid the equivalent of the value of the irrigation assets of the District in its payment to the individual land-owners within the District. The land is purchased as irrigated lands with the water right attached, that is, with the water right or the duty of water to which the land was entitled by reason of being included in the irrigation district.

It seems to me that under that theory, regardless of what might be true in other situations, that the equitable thing to do is give the District credit for the bond payment out of the value which the jury has found in the special interogatory for those irrigation properties. It seems to me that in this situation, while it may be said that the government has paid for the value of the irrigation assets of the District in paying the individual land-owners, it has paid them less what might be the bonded indebtedness outstanding against the District at the time the individual tract was purchased or condemned. In other words, I assume and I think the record shows that in these individual land cases the amount of the assessment for bond retirement was shown and the amount of the bonded indebtedness of the District, and obviously a water right of an individual land-owner would be lessened in value directly to the extent of the outstanding bonded indebtedness of the District which served him his water. If it would take \$10.00 an acre to pay off the bonded indebtedness of the District, it seems to me that would lessen the value of the water right and the value of the land with the water right attached to that extent; so it seems to me under the theory which the Court has endeavored to apply throughout this case that the equitable thing is to provide that the value found for the irrigation properties be applied to the payment of money advanced or paid into the registry of the Court and used for the retirement of bonds to the extent it

(R. 1136)

United States of America vs.

may be necessary, in view of the fact that the value of the irrigation assets found is greatly in excess of the amount of the bonds.

As to the second question raised here, I think that was decided in the proceedings brought in this court to determine whether or not the action in the State Court should be enjoined. While it is of course the duty of this Court to determine in a condemnation case with the aid of a jury if one is not waived not only what compensation shall be made to the owner of the property taken, but also to determine the persons entitled to take the compensation, here the Court takes the view that the Priest Rapids Irrigation District, although deprived of all its property, is still a legal entity, a municipal corporation under the laws of the State of Washington, and all this Court needs to determine is that the compensation should be paid to the District as a legal entity. The District being a municipal corporation of the State, under the statutes of the State the proper place for liquidation is in the State Courts, and that action already having been started, I think it is proper to provide that the funds ultimately be paid into the State Court in which the District is being liquidated.

I have no doubt that this case will be appealed, and these questions that I'm deciding now won't be difficult for an appellate court to decide, because they are simply questions of law which that Court can decide as well as I can. I hope all the questions will be decided by the appellate court so we won't be left to guess what should be done about this case and the companions case.





INDEX

Argument:

	Page
I. By acquiring at fair market value all the lands in the Priest Rapids Irrigation District the United States acquired the beneficial title to the properties held by the District for the owners of land in the District and was entitled to the legal title thereto without a further payment for the benefit of the former landowners.....	2
Conclusion.....	7

CITATIONS

Cases:

<i>Boom Co. v. Patterson</i> , 98 U. S. 403.....	4
<i>Brooks-Scanlon Corp. v. United States</i> , 265 U. S. 106.....	4
<i>Hovland v. Smith</i> , 22 F. 2d 769.....	3
<i>In re Horse Heaven Irrigation District</i> , 11 Wn. 2d 218, 118 P. 2d 972.....	6, 7
<i>In re Morris Canal and Banking Co.</i> , 104 N. J. L. 526, 141 Atl. 784.....	7
<i>Olson v. United States</i> , 292 U. S. 246.....	4
<i>Reagan v. Farmers' Loan & Trust Co.</i> , 154 U. S. 362.....	4
<i>Standard Oil Co. v. Southern Pacific Co.</i> , 268 U. S. 146.....	4
<i>United States v. Becktold Co.</i> , 129 F. 2d 473.....	6
<i>United States v. Chandler-Dunbar Co.</i> , 229 U. S. 53.....	4
<i>United States v. Miller</i> , 317 U. S. 369.....	4, 6
<i>United States v. New River Collieries</i> , 262 U. S. 341.....	4
<i>United States v. Puget Sound Power & Light Co.</i> , 147 F. 2d 953.....	6
<i>Vogelstein & Co. v. United States</i> , 262 U. S. 337.....	4

(1)



In the United States Circuit Court of Appeals for the Ninth Circuit

No. 11704

UNITED STATES OF AMERICA, APPELLANT

v.

PRIEST RAPIDS IRRIGATION DISTRICT, A PUBLIC CORPORATION, APPELLEE

PRIEST RAPIDS IRRIGATION DISTRICT, A PUBLIC CORPORATION, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WASHINGTON

REPLY AND ANSWER BRIEF FOR THE UNITED STATES

Since the issues upon which the District's cross-appeal depend are the same as those which determine the Government's appeal, the Government will not separate its argument into two parts. It is believed that so much of the District's brief as requires comment can be discussed under the caption which was employed in the first brief for the United States.¹

¹ The District's argument in defense of the trial court's misapplication of the \$170,500 deposited as estimated just compensation (pp. 68-71) presents nothing which warrants reply.

ARGUMENT

I

By acquiring at fair market value all the lands in the Priest Rapids Irrigation District the United States acquired the beneficial title to the properties held by the District for the owners of land in the District and was entitled to the legal title thereto without a further payment for the benefit of the former landowners

The Government's first brief was premised upon a single contention, so apparent that quite fairly it may be called a statement of fact. It is this (pp. 14-17): Landowners in the Priest Rapids Irrigation District *could not sever* their equitable interests in the properties to which the District had title from the lands to which they had title. Therefore, when the landowners—either by conveyance or condemnation—were divested of title to the lands, necessarily they ceased to have any equitable interest in the District-held properties. Accordingly, as the United States concluded (pp. 17-20) when it acquired all the privately-owned lands in the District, it became the sole beneficiary of the District and in fact the owner of the properties to which the District held title. Obviously, it cannot be compelled to pay a half-million of dollars to obtain the mere muniment of its ownership.

Since the Government's premise (pp. 14-17) is sound, its conclusion (pp. 17-20) follows as of course. As might be expected, the premise has never been answered. Concerning it, the trial judge (Judge Driver) said (R. 284): “* * * there is a very strong legal basis for the Government's position. It is a matter of cold logic for the Government's posi-

tion. The Government's position is almost unanswerable, it seems." Then, he rejected it with the comment that "we have here a peculiar situation" (R. 284). The District is equally inarticulate. While it purports to devote a portion of its brief to the matter (pp. 60-64) that part—and as well the rest of the brief—does not even *mention* the question upon which the case depends.

Nor does the District's brief (pp. 56-60) controvert the Government's earlier statement (pp. 12-14) that it has paid the former landowners the fair market value of their lands. While unnecessary as a matter of law, this statement was made in order to dissipate possible suspicions that these people might have been lulled into accepting from the Government less than they could have obtained in the market and that their acquiescence was induced by an impression that in the case at bar the difference would be made up.² Consequently, it is now plain that, for their lands *and* for their beneficial interest in the properties here involved, the former landowners received as much as they would have obtained in the market. This constituted just compensation for whatever they had. For—

² This was also the purpose of Mr. Ramsey's affidavit of which the District complains (pp. 58-60). The District's complaint is not well-taken. The Government quite understands that matters of evidence which could have been but were not presented for the consideration of the trial court may not be brought forward on the appeal—by affidavit or otherwise. See e. g. *Hovland v. Smith*, 22 F. 2d 769, 770. But its affidavit is a statement of matters which, taking place in the trial court, were well known to the trial judge.

“In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of private property between private parties.” *Boom Co. v. Patterson*, 98 U. S. 403, 407–408 (1878). That value is the “sum that would in all probability result from fair negotiations between an owner who is willing to sell and a purchaser who desires to buy.” *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106, 124 (1924). This sum is the market price. And market price is just compensation. For as the Supreme Court has held (*United States v. New River Collieries*, 262 U. S. 341, 344 (1923)): “Where private property is taken for public use, and there is a market price prevailing at the time and place of the taking, that price is just compensation.” Before and since the principle has been often stated. See e. g., *Boom Co. v. Patterson*, 98 U. S. 403, 407–408 (1878); *Reagan v. Farmers’ Loan & Trust Co.*, 154 U. S. 362, 410 (1894); *United States v. Chandler-Dunbar Co.*, 229 U. S. 53, 80 (1913); *Vogelstein & Co. v. United States*, 262 U. S. 337, 340 (1923); *Standard Oil Co. v. Southern Pacific Co.*, 268 U. S. 146, 155 (1925); *Olson v. United States*, 292 U. S. 246, 256–257 (1934); *United States v. Miller*, 317 U. S. 369, 373–374 (1943).

The District refers (pp. 57–58) to its unsuccessful attempt to introduce evidence of the total amount paid by the Government for the individually-owned lands and (p. 59) to the unsuccessful attempts of landowners in earlier trials to introduce evidence of the “value” of the District-held properties. These

rulings (not appealed from) were, of course, correct. In this case, evidence as to the amounts paid for the individually-held lands was not relevant. For the issue here is the effect of the acquisitions and this effect in no way depends upon their cost. The rejected offers in the earlier cases were equally inapposite. Obviously, as the Government's first brief pointed out (pp. 16-17), private parties dealing in a parcel of land in the District would not—in order to determine its market price—make a valuation of the District-held properties. Consequently, such a valuation had no place in a judicial proceeding to fix the value of that land.

And, despite the District's hints (see e. g. p. 58) no inference favorable to it results from the fact that the total cost of acquisition—said to be \$630,960.80—was less than the jury's appraisal of all the District-held properties at \$839,201. Conceivably, properties physically comparable to those here involved could have a market value of \$839,000. But they would be properties which could be employed in the generation and sale of electricity *for profit* and not like those here, which were bound to the lands in the District, which were first called on to serve those lands, which could only sell electricity not needed for this service, and which had to use the revenues from such surplus sales to lessen the charges upon these lands. The notion that anyone would pay for properties so fettered \$839,000 (as the District contends) or \$437,000 (as the jury found under the court's instructions) is fantastic. On

the contrary, it is clear that—as the Government contends—they were worthless.

Here and there (see e. g. pp. 35–45, 56–57, 60–61, 68) the District argues that, since the market value of lands in the District was also influenced by their proximity to public utilities, the necessary effect of the Government's contention must be that, in acquiring the lands, it acquired also these public utilities. Of course, this is not so. When the Government obtained the lands in the District, it obtained only what was inseparable from the lands. Since land ownership did not carry with it any property right in public utilities, the United States did not acquire a share of such utilities. Nor—as might be added—any stock therein incidentally owned by any former landowner in the District.

There is no substance to the District's attempts (pp. 46–48, 64–68) to distinguish *In re Horse Heaven Irrigation District*, 11 Wn. 2d 218, 118 P. 2d 972 (1941). True, as the District argues (pp. 45–51, 64), the Government's obligation to make just compensation may not be altered or impaired by state statute or decision. See e. g. *United States v. Miller*, 317 U. S. 369, 380 (1943). However, the determination of what is taken depends upon the law of the State where the property is situated. *United States v. Puget Sound Power & Light Co.*, 147 F. 2d 953, 954 (1944); *United States v. Bechtold Co.*, 129 F. 2d 473, 477 (C. C. A. 8, 1942). So here, the measurement of just compensation for land within an irrigation district in the State of Washington is made in accord with the

principles enunciated by the federal courts. But the rights that inhere in ownership of such land are defined by the statutes of Washington and the decisions of its courts.

The *Horse Heaven* decision is merely a statement of the obvious. It rests upon the premise that title to land in an irrigation district cannot be severed from beneficial interest in the properties which the district holds for the benefit of the landowners. This is so whether the district is operating or in process of liquidation, whether it is debt-free or insolvent, whether the property it holds for its landowners is money or, as here, a generating plant. An irrigation district is a municipal corporation, the ownership of which is evidenced by land rather than shares of stock. And just as a shareholder divests himself of his interest in the usual corporation by selling his stock so the landowner divests himself of his interest in an irrigation district by selling his land. If the sovereign should take all the stock of a corporation, it would by that act require all its physical assets. *In re Morris Canal and Banking Co.*, 104 N. J. L. 526, 141 Atl. 784 (1928). So by taking all the land of an irrigation district, the United States acquired the properties to which the District held title.

CONCLUSION

Accordingly, it is submitted that the judgment of the district court should be reversed and the cause remanded with directions to enter a judgment for a nominal amount or, in any event, for an amount which

will take into account the sum deposited as estimated just compensation.

Respectfully.

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APRIL 1948.

